LEGISLATIVE COUNCIL

Wednesday 9 October 1991

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

PETITION: PROSTITUTION

A petition signed by 187 residents of South Australia praying that the Council will uphold the present laws against the exploitation of women by prostitution, and not decriminalise the trade in any way was presented by the Hon. M.J. Elliott.

Petition received.

QUESTIONS

HIGHER EDUCATION CONTRIBUTION SCHEME

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister of Tourism, representing the Minister of Health, a question about HECS payments for dental therapists.

Leave granted.

The Hon. R.I. LUCAS: I refer to minutes of the 7 June 1991 meeting at the Dental Therapists Association of South Australia, which provide details of the Diploma of Dental Therapy course that is conducted at Somerton Park under the control of the University of Adelaide. The minutes detail that the Higher Education Contribution Scheme (HECS) tax is paid for students in this diploma course by the South Australian Dental School. Further, this payment of around $1 000 per semester, or $2 000 a year, is paid directly to the student at the beginning of each semester. It is then up to the student to determine whether to pay the HECS fee or to defer payment and keep the $1 000.

I am sure many struggling tertiary students would be interested to learn of this cosy arrangement with dental therapy students that has been organised by the Bannon Government through the South Australian Dental Service, particularly those students facing increases in their HECS debt of around 12 per cent next year and those to be affected by the Bannon Government's plans to withdraw transport concessions to all tertiary students except those receiving Austudy.

One constituent has suggested that, theoretically, some graduates from this course may never have to pay the HECS fee, despite receiving more than $4 000 over two years from the Bannon Government as its contribution towards the fee. This is because students can either pay their HECS tax up front or opt to defer payment until after graduation and commencement of employment. However, no HECS debt is repayable until the graduate begins earning an annual income of $25 469 (in 1991) rising to about $27 000 per annum next year. As dental therapists now command salaries of around $20 000 a year, it is quite clear their repayment could be some time coming. It has also been put to me that it is questionable whether we should be continuing to train as many dental therapists. In fact, some would argue that we should not train any further dental therapists.

Therapists were introduced in 1970 to treat dental decay among school-age children. According to statistics, since that time there has been a dramatic drop in dental decay among children through fluoridation. An increasingly important problem today among schoolchildren is in the orthodontic area, for which therapists receive no training. I refer to some statistics that were forwarded to my office this afternoon as follows: in South Australia, the caries severity rates for 12 year olds, which are remarkably close to the Australian average, have fallen from 8.22 for boys and 9.04 for girls in 1970 to 1.27 in 1990. The number of primary schoolchildren not requiring any treatment has increased from just 5 per cent in 1970 to more than 80 per cent in 1990. My questions to the Minister are:

1. What steps will the Government take to ensure the payment of the subsidy is used for the purpose for which it was granted to students?
2. Does the Government believe there is a shortage of dental therapists in South Australia which necessitates the payment of this subsidy?
3. Is the subsidy paid also to students from interstate who are studying for the diploma in South Australia?
4. What is the total annual cost of this scheme?

The Hon. BARBARA WIESE: I will refer the honourable member's questions to my colleague in another place and bring back a reply.

VICTIMS OF CRIME

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about the rights of victims of crime.

Leave granted.

The Hon. K.T. GRIFFIN: Principle 13 of the statement of victims' rights, published by the Attorney-General in 1985, provides that a victim has the right to be advised of the outcome of all bail applications and be informed of any conditions of bail which are designed to protect the victim from the accused. Principle 17 provides that a victim has a right to be notified of an offender's impending release from custody.

A person by the name of Robert Wayne Clarke has been charged with offences relating to assaulting his wife who is now in hiding interstate. Bail was granted and Clarke was released on bail. Subsequently, he was arrested for breach of bail conditions and kept in custody. Because of the threats which Clarke had made to his wife and to others close to her a supporter of the wife insisted to police that she be notified of Clarke's release from custody. This was agreed to by the police who accepted that there was a need for this to occur in this case.

On Monday 16 September 1991 Mrs Clarke heard on the grapevine—not from anyone connected with Correctional Services, the police or Government agencies—that Mr Clarke had been released again on bail on that day. She was very upset that she had not been informed by any Government officer that an application for bail was being made or that Clarke had been released.

Mrs Clarke telephoned a family friend and supporter on the evening of 16 September and that person immediately telephoned a Mr Mitchell at Yatala who said that Clarke was not there. The reason why the person had telephoned Yatala was that at some time during the year he had understood that Clarke had been in Yatala. Following that call—this was about 10.30 at night—there was a call to the Adelaide Remand Centre where the family friend spoke to a supervisor, who would not disclose his name, but who said that Clarke was still in the Adelaide Remand Centre.

The next day, 17 September, Mrs Clarke again rang from interstate in a distressed state to say that the grapevine had again confirmed to her that Clarke was in fact released on bail on 16 September. A phone call on the evening of 17

September to the police brought the response that they did not know of Clarke's release and were amazed that they had not been informed either about the application for bail or the release from custody. My questions to the Attorney-General are:

1. How seriously is the declaration of victims' rights taken by the Government and its agencies if this problem with Clarke's release occurs?

2. Will the Attorney-General have this breakdown in the application of the declaration of victims' rights investigated and report on how and why it occurred and whether or not it is a common occurrence?

3. What procedures are in place to ensure that in relation to bail and release from custody victims are informed promptly?

The Hon. C.J. SUMNER: It is obvious that the Government takes the declaration very seriously. It has been in place effectively since 1986. It was a pioneering declaration in Australian terms and in some respects led the rest of the world in providing rights to the victims of crime. Regrettably, promulgation of such rights by the Government does not automatically assume that on some occasions there may not be slip-ups with their implementation.

There ought not to be, as all agencies are aware of them: the police and the Correctional Services Department particularly are aware of the rights of victims of crime and have taken steps within their own procedures to try to ensure that the rights are fully and properly instigated. In this case I do not know the full circumstances of the matter. If there was a breakdown, obviously that is not an acceptable situation and I would convey my apologies to Mrs Clarke if that caused her or her friends any concern. Whether or not it needs investigation, as the honourable member has asked for it I will do so. If what he outlines is correct, obviously there has been a breakdown that should not have occurred. I will check on the third question asked by the honourable member.

DRIVING TESTS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister for the Aged, a question about driving tests for older people.

Leave granted.

The Hon. DIANA LAIDLAW: On 1 October the Minister of Health announced that South Australians aged 75 years and over will no longer have to undergo a mandatory driving test. Until now older South Australians have been required to undertake a driving test on turning 75, take another test at 80 and then be tested every year thereafter. I support this change. However, in the past week I have been contacted by a number of relatives, generally the daughters, of older people who are suffering from dementia. They expressed anxiety about the decision to abolish mandatory driving tests, a general concern that has been reinforced in conversations I have had with representatives of ADARDS, the Alzheimer's Disease and Related Disorders Society. ADARDS confirms that people suffering with dementia do not understand that they may not have the capacity for certain undertakings, for example, driving a motor vehicle. They argued to me that most people become defensive and will vigorously deny to their doctor and anybody else that they suffer memory loss. They may be a hazard on our roads and certainly they suffer some loss of ability to initiate actions which, as we all appreciate, is important when driving a motor vehicle.

I was also told the story by one woman who had been trying desperately over some years to have a doctor advise the department that her husband was suffering from dementia. He went out for a trip to the rubbish dump, which should have taken only about an hour to return as the dump was only a mile from his home. He left at 10 o'clock but was not back at 4 o'clock. She got a telephone call from the police. He had driven himself up to Mount Pleasant in error, even though the dump was only one kilometre from his home. He could not understand why the police and everyone else was around and he could not understand that he had driven to Mount Pleasant. ADARDS advised that there are about 11 000 people in South Australia with dementia and that with our ageing population this number is increasing by 1 000 per annum and possibly will double by the year 2000.

Apparently 20 per cent of persons 80 years and over show signs of dementia. Because of community concern about the issue of driving tests and dementia, I ask the Minister, first, when taking the decision to abolish mandatory driving tests for people aged 75 years and over, was consideration given to the circumstances of older people with dementia? Secondly, can the Minister confirm that some of the funds to be saved by this initiative will be available to associations such as the Australian Medical Association and ADARDS to prepare guiding notes and possibly to conduct training courses to assist doctors to detect early signs of dementia and notify the Department of Road Transport accordingly that this health impairment is likely to affect an older person's driving ability?

The Hon. BARBARA WIESE: I will refer the honourable member's questions to my colleague in another place and bring back a reply.

ROXBY DOWNS

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Tourism, representing the Minister of Mines and Energy, a question about solar energy and Roxby Downs.

Leave granted.

The Hon. I. GILFILLAN: Recently, I returned from a two day trip to Roxby Downs at the invitation of Western Mining. That trip, on which I was accompanied by a number of other members from both Houses, including you, Mr President, was not altogether without incident. Even before we actually got off the ground, we managed to lose 60 per cent of the party, one of whom actually never made it (and he is with us in this Chamber). Much to my regret, that did not happen.

The trip was very informative. We were shown through the mine. Before going underground, we were supplied with a complete change of clothing, indicating the concern that Western Mining has for the safety and protection of visitors to the mine. In fact, I understand that you, Mr President, inadvertently were issued with a pair of female panties and white gloves to wear. Unfortunately, you, Sir, declined to put on those garments. Another member, who shall remain nameless, when he was putting on his overalls, asked me whether he was doing it correctly. I understand that he had never had a pair of overalls on before in his life.

During my visit and tour of the gigantic mining operation at Roxby, I was surprised to learn that the township, located in what must be one of the best areas for utilising solar energy in the world, does not have a single solar hot water system. As a result of this oversight, Roxby Downs must rely entirely on ETSA burning non-renewable fossil fuels to

provide electricity for all the town's requirements, including hot water. It is worth noting that the mining operation at Roxby currently consumes fossil fuel for the production of electricity at the rate of $1 million per month, which is paid to ETSA.

However, at nearby Woomera virtually all the houses have solar hot water systems installed. Indeed, generally an increasing number of units are being used throughout the northern parts of the State, but not at Roxby Downs. Australia is one of the world's leading developers of solar systems. Recently, Australian solar energy scientists scored a major breakthrough in the design of new materials that will revolutionise the world's power industry within a decade. The new material, which was given publicity in the *Australian* newspaper of 24 September, is called High Efficiency Service (HESS) by its developer Dr David Mills, who is an Australian.

Dr Mills said that for the first time there is a material that will allow mass production of high energy, low cost solar collectors that can produce steam for power generation at a cost below that of most fossil fuel systems, which is estimated at roughly 5c per kilowatt hour. That will be roughly half the cost of production in the world's most economic solar power station, the Luz plant in California. This advance means that solar energy will become a genuine economic alternative to the burning of coal and gas and, at the same time, will go a long way in helping to reduce greenhouse gases. However, Roxby Downs has no solar energy units of any kind, and it continues to be one of this State's major contributors to the greenhouse effect.

For its water, Roxby Downs also relies on artesian reserves, which have a high salinity content and must go through a desalination process before being fit for human consumption. Roxby could use photovoltaic cells to produce electricity for general use and for water desalination, instead of continuing the drain on South Australia's fossil-fuelled electricity supply. Roxby Downs does not utilise any of those alternatives to burning coal and generating electricity through Port Augusta. My questions are:

1. Does the Minister agree that Roxby Downs is one of the most favoured areas in the world for solar energy?
2. If so, how does he explain that not one Government building in Roxby has any form of solar catchment?
3. Will the Minister give an undertaking to have solar hot water and electric power generation installed in all Government facilities at Roxby?
4. Will he instruct Western Mining to optimise the use of solar power in lighting, heating and water desalination at Roxby Downs?

The Hon. BARBARA WIESE: If the circumstances outlined by the honourable member are true, they do seem unusual when one considers the fact that a town such as Leigh Creek, which was established largely by the Electricity Trust of South Australia, uses solar power extensively and provides a very good example of what can be achieved in this area. I am not sure of the arrangements that were made at the time of the establishment of the township of Roxby Downs, and I shall be happy to refer the honourable member's questions to my colleague in another place and bring back a reply.

COOPER CREEK CROSSING

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Arts and Cultural Heritage, representing the Minister of Transport, a question about the Cooper Creek crossing.

Leave granted.

The Hon. PETER DUNN: As most members would know, the Cooper Creek floods infrequently, approximately once every 15 years. However, in the past two years in succession, in 1990 and 1991, it has covered the Birdsville Track. A punt was used to transport cars across the creek from March 1990 to January 1991. Prior to that there was a great rush to shift cattle out of the area north of the crossing, and a number of stock were airlifted and transported to the Adelaide market before they were in prime condition, thus causing a loss to the pastoralists concerned.

The creek crossing was unavailable to road trains for nine months from March 1990 to January 1991, a long time under anyone's definition, particularly when there were many fat stock in the area due to the favourable season in 1989-90. These cattle had to go somewhere, and Queensland has been the beneficiary. At a rough guess, 20 000 cattle from South Australia have gone to that State.

The processing of this stock in South Australia would have employed hundreds of people in the form of slaughtermen, packers, processors, transporters, drivers, etc. However, the Government would not spend the moderate sum of money to upgrade the road crossing at Etadunna, although it had several months warning that Cooper Creek was flooding. Station owners in the area inform me that roads leading to Adelaide are in far worse condition than those leading to Brisbane. Therefore, they prefer to send their stock to Brisbane because there is less bruising. As well, carriers from Queensland now have a foot into a significant section of the South Australian cattle industry and are offering good deals to transport stock to the eastern States.

My questions are: first, will the Bannon Government build a crossing that road trains may use when Cooper Creek is in flood; and, secondly, will the Minister's department improve the road surface on the Birdsville Track to attract road trains back to South Australia so that abattoirs in this State can process those cattle products?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply.

ABORIGINAL ARTS

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage a question about support for Aboriginal arts.

Leave granted.

The Hon. T.G. ROBERTS: Today's *Advertiser* contains details of a report commissioned by the Government that was prompted by the Royal Commission into Aboriginal Deaths in Custody. The report details preferences for employment, training and education and there is an interim report from the Aboriginal Education Foundation. During the budget Estimates Committee a question was asked on 17 September by the Hon. Mr Wotton in another place on details about a rock group called Red Buck. As members on both sides of the Council—in particular, the Hon. Mr Burdett and the Hon. Mr Lucas—would be aware, the Aboriginal group Yothu Yindi is at the top of the charts at the moment. I am sure that the Hon. Mr Burdett hums the tune, which is about the treaty, on his way into Parliament House. Can the Minister for the Arts and Cultural Heritage throw any light on this group about which a question was asked during the budget estimates?

The Hon. ANNE LEVY: Red Buck is a South Australian band that is probably unique among bands in this country. It has male and female Aboriginal and non-Aboriginal mem-

bers. This band specialises in country and western music, but it also performs music of a more traditional Aboriginal nature. Recently, the band was invited to the United States to the Paseo del Rio Association of San Antonio, Texas, and it also received an invitation from four of the Indian reservations in the south-west of the United States to perform there and to take part in a country music festival.

The Red Buck band applied to the Department for the Arts and Cultural Heritage for financial assistance through the Arts Projects Assistance Scheme. The application was assessed by the Aboriginal Arts Advisory Committee, one of the peer group committees that assess all applications for project grants. The members of the committee were unanimous in recommending a grant, which I was delighted to approve. This grant, which totalled $4 350, was provided towards the travelling costs, including air fares, accommodation and living expenses of two members of the band: the bass player and the didgeridoo player. The other members of the band were able to fund their own travel to the States to take part in this festival, but these two members did not have another source of funds.

The band's itinerary when in the United States was determined by the Paseo del Rio Association and the four Indian reservations that had invited them and was extended due to further invitations that were received from other organisations such as the Huachuca Army Barracks. We were delighted to be able to assist the Red Buck band to undertake this tour. It will certainly be influential in developing cultural relations with the United States. The band will establish contacts with other Aboriginal artists who wish to perform there, in particular with American Indian artists, and we hope there may be opportunities for some American Indian artists to perform in this country.

The band will also promote Aboriginal arts and crafts while in the United States. Members of the band will wear Aboriginal clothing and their gifts to their hosts will be of Aboriginal items. I understand that they are presenting a plaque from the South Australian Keswick Army Barracks to the Huachuca Army Barracks, and there will be a reciprocal presentation to the Keswick Army barracks of a plaque which members of the Red Buck band will bring back to Australia. The band has not yet returned; it is still in the United States. We hope to see it back here shortly and learn of the good work it has been able to do both for South Australia and for Aboriginal arts in general while in the United States.

STAMP DUTIES

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier and Treasurer, a question about the payment of stamp duties.

Leave granted.

The Hon. J.F. STEFANI: On or about 15 March 1990, the State Bank of South Australia and, at that time, its fully owned subsidiary, Executor Trustee Australia Ltd, each provided a fixed and floating equitable charge of $400 million, and $600 million respectively to Myadel Pty Ltd to cover advances and other liabilities arising from the construction of the Myer Centre. Each document was submitted to the South Australian Commissioner of Stamps for assessment and the sum of $10 000 was paid on each document as security. What is the total amount that has been received by the South Australian Government on the draw-down against each of the original facilities?

The Hon. C.J. SUMNER: I will get an answer to the question and bring back a reply.

ELIZABETH WEST ADULT CAMPUS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Employment and Further Education, a question about the Elizabeth West Adult Campus.

Leave granted.

The Hon. M.J. ELLIOTT: About two weeks ago I received a letter from the school council of the Elizabeth West campus of the Inbarendi College. I think that the letter best explains the position. It reads:

> As school council Chairperson of the Elizabeth West Adult campus of Inbarendi College, I wish to register concerns of council members at the recent decision of the Education Department, which will result in an enrolment ceiling of 620 FTEs for this school. We are also very concerned about your directive to concentrate our efforts in the senior years. We find, from long hard experience, that bridging courses are absolutely necessary to bring a large number of students to a standard that is required to successfully complete their senior secondary schooling. The new SACE course requires that the students show competency in literacy and numeracy. Without these bridging courses, many will not attain this standard. A large number of prospective students have left school before attaining sufficient levels of numeracy and literacy skills. To deny these aspiring students social justice in education is in our view totally irresponsible.
>
> We understand that the continual rise in students numbers cannot go on indefinitely because of limitations of accommodation, but, until this school has reached this capacity, student numbers should not be curtailed. Social justice through social action says that 'we want schools which are able to develop potential, pave the way for job opportunities, teach from a relevant curriculum, provide a safe learning environment, encourage students to achieve and increase student self-esteem'. If we prematurely seal student numbers and limit pre SACE courses how can we achieve these outcomes?
>
> This year attempts have been made to encourage increasing numbers of Aboriginal students to participate in our school community. Next year a special bridging program targeting Aboriginal students has been planned. What do we say to future students when we have filled our quota? Please advise. We strongly request that the enrolment ceiling be removed, and that this school community be allowed to designate the type of courses that are relevant to the needs of clientele.

It is worth noting that adult matriculation courses have been removed from TAFE and the Government has decided that all adult courses shall be returned to the Education Department. According to this letter, we now find that, having shifted adult courses back to the Education Department, a ceiling is being placed on entrants into at least one adult campus, and that ceiling does not relate to the capacity of the school to take in students. It also appears to be interfering with the education decisions made by the people in the best position to make such decisions.

At the same time we also have a Minister of Employment and Further Education—better known as the Minister for Stunts—who gives all sorts of impressions that the Government is about helping the unemployed, particularly the young adult unemployed. In the Elizabeth West area unemployment, particularly among young adults, is extremely high. Their one chance of getting into employment is to go back and study, but the Government has now decided to deny that opportunity to those adults who are willing to make this decision.

How does the Minister justify the ceilings that have been placed on Inbarendi College and the interference in the style of courses being offered there; and how long can the Government pretend to be serious about education generally and the education of young adults and social justice with such a move?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply.

LOCAL GOVERNMENT SERVICES BUREAU

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister for Local Government Relations a question about the Local Government Services Bureau.

Leave granted.

The Hon. J.C. IRWIN: I understand that the Local Government Services Bureau has Government funding of $1.286 million for 1991-92. However, I understand it is the Local Government Association's intention to have all matters before the bureau concluded before the end of December this year. Does the Minister think that this can be achieved? Can the Minister give an indication of the timetable agreed with the Local Government Association for legislation to be in place prior to 30 June 1992 to enable local government to function with virtually no ties to a department or the bureau?

The Hon. ANNE LEVY: I cannot give any details to which the honourable member has referred. The Local Government Services Bureau is funded until the end of June next year. While I appreciate that the Local Government Association has indicated that it would like to see it wind down and cease not all but most of its services by the end of this calendar year, a number of matters are currently under negotiation which will have to be settled if that is to be achieved. The negotiating teams meet every two weeks and I know that a great deal of work is going on. Papers are being prepared on both sides to serve as the basis for future discussion, and there are position papers and so on. However, it is the nature of negotiation not to be able to say when it will be terminated. If one knew that, it would not be negotiation as it is properly understood. It would be impossible for me to say whether that is achievable or not.

There has been discussion with the Local Government Association with regard to the legislative program. It is true that some legislation will be required before the end of June next year, which means in the autumn sitting of this Parliament. I think that the Local Government Association had the view that a complete legislative review could be achieved in time for that legislation to be put before the Parliament and passed by that date. Personally, I doubt whether it is possible for that to occur given the extent of the discussions and the changes which would be necessary. Suggestions have been made to the LGA that some more urgent sections of the Local Government Act should be picked out and discussed and amendments to those brought before the House before the due date, leaving other sections of the Act to be considered presumably 12 months from now.

The discussions are continuing with regard to the legislative changes which will be necessary. I hope that the necessary changes can be implemented in the February to April sitting next year. I would be delighted if the negotiations proceeded so rapidly that the entire legislative changes required could be achieved at the same time, but it would be unrealistic at this stage to imagine that that could be achieved in such a short time.

BUSINESS LICENCE CENTRE

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Small Business a question about a business licence centre.

Leave granted.

The Hon. L.H. DAVIS: One recurring problem for many small businesses is finding out which Government licences are required, where to get them and what legislation is to be observed. In the Labor Party 1982 State election policy speech, Premier Bannon said:

> We intend the Small Business Corporation to be a one-stop shop for people intending to start a small business and others wishing to expand their current operations.

In the 1985 State election policy speech Premier Bannon promised that the Government would consider:

> . . . the establishment of a shop front one-stop shop to provide all forms and applications required by the public.

In 1989 Premier Bannon, in the State election policy speech, presumably on the basis of third time lucky, said:

> The Government will establish a one-stop shop business licence centre to be based at the Small Business Corporation.

In 1991, two years later, that centre has yet to be created. New South Wales, Victoria and Queensland have all set up a one-stop business licence information centre which can provide persons opening a small business with copies of or information on Commonwealth and State legislation for all business licences. These centres can also issue application forms for those licences. In fact, once negotiations with the Commonwealth Government are complete, these one-stop business licence information centres will be able to issue application forms for relevant Commonwealth and State licences. In New South Wales the Business Licence Information Centre also accepts licence applications, deals with the licensing authorities on behalf of the applicant and can also issue licences directly. Where, for example, an applicant may normally need five licences, the licensing centre can issue one master licence covering all licensing requirements of all relevant departments or authorities—a tremendous advantage for small business. Larger departments in New South Wales, which have to issue licences, have staff located at the licence centre or have a hotline phone system.

In New South Wales, Victoria and Queensland, their licensing data is on computer with the systems being modified at Commonwealth expense to be able to load Commonwealth licensing requirements. Western Australia is currently buying computer equipment and will have its business licence centre up and running in the first quarter of 1992. The Northern Territory has also made progress in this area. Will the Minister advise what is the position in South Australia and when will the Bannon Government honour its 1985 and 1989 promises regarding a business licence centre? Why is the Government apparently trailing other States, certainly New South Wales, in this important area? How much money has been budgeted for a one-stop shop business licence centre in 1991-92?

The Hon. BARBARA WIESE: With respect to the latter question, no funding has been provided in the budget for the establishment of a business licence centre during the current financial year. However, considerable progress has been made in planning for a business licensing information service for South Australia. With the delays that have occurred in the establishment of such a service in South Australia, we will benefit from the mistakes and problems that emerged in other States—

The Hon. L.H. Davis interjecting:

The Hon. BARBARA WIESE: —with the establishment of their systems and we will be able to establish a system at a small fraction of the cost that applied in other parts of Australia. We will have a system that is tried and true and will not have the problems that other systems had in the establishment phase.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will come to order.

The Hon. BARBARA WIESE: The first business licensing information service was established in Victoria. It was the first in the country, it was a pioneering idea and new

technologies were required to achieve it. It took many months to get the bugs out of the system and make it work appropriately. As a result of that, it was also extraordinarily expensive. New South Wales and Queensland, which have followed in establishing their services, have been able to pick up and improve on the system that was established in Victoria and have been able to do it at considerably less cost.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis has asked his question, so he should listen to the answer.

The Hon. BARBARA WIESE: Tasmania is looking at establishing a different type of system for that State at something like less than a quarter of the cost of the Victorian system, and it may very well be a system more appropriate for South Australian use than the system currently in use in Victoria, New South Wales and Queensland. We are currently assessing or waiting for information from the Tasmanian Government about the system that it is implementing as we believe it may very well be a more appropriate system for this State.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: The Commonwealth Government entered into a pilot scheme with the Victorian and New South Wales Governments during the course of this year to add Commonwealth business licensing information to the computer systems of the business licensing information service in those two States. When South Australia implements its scheme it will be able to pick up the best of the packages that have been developed in Australia. Hopefully, we will be able to introduce simultaneously State and Commonwealth information and be able to do it without the months of difficulty that other States experienced when introducing their systems.

The Hon. L.H. DAVIS: By way of supplementary question, if the Minister has made no allocation in the 1991-92 budget for a business licence centre, can she advise what plans exist for future years? Does she expect an allocation in the 1992-93 budget or beyond that period?

The Hon. BARBARA WIESE: The honourable member has been in Parliament for over 12 years but he does not yet seem to have learnt much about the business of Government and the making of budgets. As he well knows, budgets are made only on an annual basis, as are budget decisions, and it is usually not the practice of Governments to make decisions beyond the current financial year under consideration, nor in the current climate is that sort of decision-making possible. The fact that there is no allocation in this year's budget does not necessarily mean that it will not be possible to establish such a system this financial year if the studies to which I have referred produce results indicating that such a system could be introduced at a relatively low cost to the South Australian Government. Those matters are being examined by appropriate agencies within Government and I hope that we will soon have a satisfactory outcome and a system which we can feel confident about introducing into South Australia and which will provide the very best possible service for South Australian small businesses.

DIVERS' QUALIFICATIONS

The Hon. R.J. RITSON: Has the Attorney-General an answer to my question of 13 August about divers' qualifications?

The Hon. C.J. SUMNER: I seek leave to have the detailed answer incorporated in *Hansard* without my reading it.

Leave granted.

The Minister of Marine has provided the following response to the honourable member's question:

In February this year, Laurie Marine and Diving Pty Ltd had a diving contract at Port Lincoln Ship Construction. The Department of Marine and Harbors did not tender for the underwater construction work. The department's only involvement was a preliminary inspection by its divers, followed by a preliminary assessment. Department of Marine and Harbors officers at Port Lincoln had informal discussions with Port Lincoln Ship Construction and offered other expertise if required; that offer was not taken up.

The Department of Labour did not receive any complaints under either the Occupational Health, Safety and Welfare Act nor (in the context of wages and related matters) under the then Industrial Conciliation and Arbitration Act, now the Industrial Relations Act 1972. Queries were raised with the Department of Labour during the course of the diving work at Port Lincoln Ship Construction, which led to an inspector of occupational health and safety attending the worksite. The inspector found that divers were working from a pontoon in approximately 15 feet of water. A flag to indicate that diving was in progress was being flown, supervision and attendants with first aid documentation were available, and a standby diver, underwater communications equipment, camera and backup gear were also at hand. Log books and medical certificates were also available.

While in attendance at the worksite the inspector was not harassed in any way and did not, particularly in the light of the nature of the work and the depth at which it was being carried out, detect any serious breaches of the construction safety regulations under the Occupational Health, Safety and Welfare Act. To clarify the situation, the employer was fully aware of his obligations and responsibilities under section 19 of the Occupational Health, Safety and Welfare Act. While construction regulation 118 has very specific requirements in calling up Australian Standard 2299, changes to training requirements still had to be addressed, which, when coupled with the limited number of training venues, had precluded total compliance at that time. The inspector was, however, satisfied that all appropriate steps had been taken on the part of the employer to provide for the safety of those engaged in the underwater work. Given the foregoing explanation, it is doubtless clear that there were no grounds nor reason to consider prosecution in respect of this matter.

UNPROCLAIMED ACTS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question about Acts passed but not proclaimed.

Leave granted.

The Hon. J.C. BURDETT: I have raised on several occasions the long list of Acts that have been passed in this Parliament but never proclaimed, either in whole or in part. That makes a mockery of Parliament and I will keep asking questions until the situation changes. The two Acts to which I refer today are in the portfolio of the Minister of Health, one being the Dentists Act of 1984—seven years ago. It is similar to the time scale to which the Hon. Mr Davis referred earlier.

Section 78 has not been proclaimed to commence. This relates to practitioners carrying indemnity insurance. I would have thought that was a fairly important aspect and, if there is anything wrong with it, the Government can introduce an amendment or repeal that part of the Act. That has never been proclaimed. In the next Act, the Controlled Substances Act, sections 3 (1), 12 (5), 12 (6), 12 (7), 13 to 18, 20 and 23 to 29 have also not been proclaimed. They cover serious matters relating to controlled substances, drugs and so on. Why have neither of those two brackets been proclaimed? When will they be proclaimed?

The Hon. BARBARA WIESE: I will refer the honourable member's question to my colleague in another place and bring back a reply.

REPLIES TO QUESTIONS

The Hon. C.J. SUMNER: I seek leave to have the following replies to questions inserted in *Hansard.*

MICHAEL KEITH HORROCKS

In reply to **Hon. K.T. GRIFFIN** (15 August).

The Hon. C.J. SUMNER: The Minister of Correctional Services has provided the following response to the honourable member's question:

1. The earliest release date as calculated by administrative staff at Yatala Labour Prison was 12 July 1990. This however was incorrect and the correct release date for Mr Horrocks was 30 November 1990.

2. Mr Horrocks was released on unaccompanied temporary leave on 15 May 1990. This leave was to expire on 15 June 1990. Mr Horrocks is currently on remand for larceny and is due to appear in Berri Court on 9 September 1991.

3. Offenders have been released on unaccompanied temporary leave prior to their release from parole; however, they must sign their parole release orders thereby accepting in writing their conditions of parole before being given such leave.

TUBERCULOSIS IN STATE PRISONS

In reply to **Hon. K.T. GRIFFIN** (15 August).

The Hon. C.J. SUMNER: The Minister of Correctional Services has provided the following response to the honourable member's question:

1. The comprehensive screening program undertaken by South Australian Tuberculosis Services has revealed that no prisoner or staff have active tuberculosis. To minimise the likelihood of claims for compensation, re-testing will occur again in September/October 1991 and June/July 1992. Should a prisoner or staff member be diagnosed as having active tuberculosis, the particular case would be reviewed with treating medical practitioners to determine the likelihood of the disease being contracted through the infected former prisoner.

2. Testing was initiated by the Department of Correctional Services in consultation with South Australian Tuberculosis Services immediately after notification.

The testing for tuberculosis at Yatala Labour Prison, Mobilong Prison and Cadell Training Centre was mandatory for staff and prisoners who had contact with the infected prisoner only. Those prisoners or staff who did not have contact with the infected prisoner were not required to be tested.

3. All prisoners and staff considered to have been in contact with the infected prisoner have been tested. Contact tracing involved tracing all persons who may have come into contact with the infected person. This process was performed by South Australian Tuberculosis Services, Royal Adelaide Hospital and included writing to prisoners who have been discharged who may have had contact with the infected person.

The Hon. ANNE LEVY: I seek leave to have the following replies to questions inserted in *Hansard.*

Leave granted.

RADIOACTIVE WASTE DISPOSAL

In reply to **Hon. M.J. ELLIOTT** (10 September).

The Hon. ANNE LEVY: The Minister for Environment and Planning has informed me that liquid and solid wastes produced during Stage 3 of the rare earths extraction plant proposed by SX Holdings are well defined materials. The ponds used for treatment and disposal of waste are regarded as an extension of the proposed processing plant.

The Waste Management Commission does not license on-site waste treatment facilities as depots under section 16 of the Waste Management Act 1987. As a consequence SX Holdings would not require a licence and would not be subject to Regulation 8a.

Regulation 8a of the Waste Management Regulations, 1988 is designed to control depots using evaporation ponds which receive wastes of varied and generally unknown composition. This clearly is not the case in this instance.

No materials contaminated with radionuclides will be directed into the ponding system proposed by SX Holdings. The Commonwealth Draft Code of Practice for Near-surface Disposal of Low-level Solid Radioactive Waste in Australia (1992) would not be a consideration for this proposal. However, because monazite itself does contain radionuclides, the entire site area would need to be licensed under the Radiation Protection and Control Act.

SOMERSET HOTEL

In reply to **Hon. M.J. ELLIOTT** (12 September).

The Hon. ANNE LEVY: The Minister for Environment and Planning has informed me that the State Heritage Branch has reviewed all material currently available regarding the heritage significance of the Somerset Hotel and maintains its recommendation that the building should not be included on the Register of State Heritage Items.

The Minister has not corresponded with the development proponets on other sites.

The visual impact of any development on the site will depend largely upon the design of the proposed structure. The retention of the hotel will not guarantee any softening of the visual impact of the office complex or benefit to the overall streetscape.

KANGAROO ISLAND TOURISM DEVELOPMENT

In reply to **Hon. M.J. ELLIOTT** (27 August).

The Hon. ANNE LEVY: The Planning Act enables appeals to be lodged by any third party who made representation during public exhibition of the application. It also enables the Minister for Environment and Planning to intervene in any proceedings before the Planning Appeal Tribunal if of the opinion that proceedings before the Tribunal involve a question of public importance; see Section 30 (2) of the Planning Act.

When the decision of the District Council of Dudley on this application is formalised, appeals may be lodged by organisations or groups who oppose the development. Any organisations or people lodging an appeal are able to seek support from relevant professional people to ensure their case is properly considered by the Tribunal. This process allows the matter to be resolved by the Tribunal on its merits.

The Minister for Environment and Planning reserves the right to intervene in the proceedings pursuant to Section 30 (2) of the Planning Act, if it is considered necessary.

The Government's position regarding devolution of planning powers to Local Government is quite clear and is based on strong policies being in place so that there is no potential for reduction in environmental protection. Any devolution maintains the status quo regarding appeal mechanisms which enables the Minister and representors to test any Council decisions as necessary.

The latest recommendations to Government in respect of devolution of planning powers would not alter the circumstances regarding the proposal under discussion.

A Kangaroo Island Tourism Policy Document has recently been formulated over a period of some 12 months involving input from the Government. Local Government and the public. The principle objective formulated for development of tourism on Kangaroo Island is to 'achieve an economic and environmentally sustainable tourism industry on Kangaroo Island by positioning it as one of Australia's leading nature, wildlife and rural retreat experiences'. To achieve this objective new development opportunities must conserve the primary values of the Island. Negotiations are currently occurring between Government and Local Government with a view to formalising the tourism policy into the Development Plan.

SEPTIC TANK EFFLUENT DRAINAGE SCHEME

In reply to **Hon. J.C. BURDETT** (29 August).

The Hon. ANNE LEVY: My colleague the Minister of Water Resources has advised that the septic tank effluent drainage (STED) schemes in the Tea Tree Gully Council area were installed progressively from the late 1950s to the early 1970s. In recent years the Council has made a number of approaches to the Engineering and Water Supply Department requesting that the Department either take over the operation of the schemes or replace them with sewerage systems.

It appears that the Council is encountering increasing maintenance problems with the schemes, which is somewhat surprising as STED schemes could normally be expected to last well over 40 years before significant refurbishment or replacement was necessary.

As far as can be ascertained, the Deputy Premier made no commitment during his period as Minister of Water Resources that the scheme would be taken over in any period of time. However he did give an undertaking that replacement of the STED schemes with a sewerage system would occur when funds became available, and that 'the normal capital works program would be applied' at that time.

To date, funds have not become available and the Minister of Water Resources is not able to predict when they will. However, following an approach from Tea Tree Gully Council, an investigation into possible cost sharing arrangements was undertaken with a view to the possible replacement of some pockets of the STED scheme prior to the availability of capital funds.

The Engineering and Water Supply Department designed a sewerage scheme to serve the Council's highest priority area and obtained a cost estimate for construction of the scheme.

The Minister of Water Resources then wrote to the Council in February 1990 indicating that she would support installation of the scheme, provided Council met a number of conditions including the provision of funding contributions and obtaining community acceptance for the proposal. To date, no reply has been received to that letter.

TORRENS RIVER CROSSING

In reply to **Hon. J.C. BURDETT** (11 September).

The Hon. ANNE LEVY: My colleague the Minister of Transport has advised that the Reids Road-Silkes Road crossing forms part of the local road network under the care, control and management of the Cities of Tea Tree Gully and Campbelltown. Accordingly, upgrading of the crossing rests with Local Government.

The Department of Road Transport has no plans to build a bridge over the River Torrens opposit Hancock Road, or to undertake a feasibility study into such a project in the foreseable future.

The Department is responsible for the arterial road network in the area and considers that these needs are adequately catered for by Lower North East Road, Darley Road and Gorge Road.

The traffic signals recently installed at the junction of Lower North East Road and George Street, Paradise, will be of benefit to motorists travelling from Athelstone to Tea Tree Gully.

SOUTH AUSTRALIAN FILM CORPORATION

In reply to **Hon. DIANA LAIDLAW** (11 September).

The Hon. ANNE LEVY: The Board of the Corporation has commenced work on the preparation of financial scenarios for the next three years. It was felt appropriate to finalise the Corporation's organisational requirements in the first instance and then to begin the task of detailed financial forward planning. It is expected that this task will be completed by the end of 1991.

Although the 1991-92 budget has yet to be formally approved by the Board of the Corporation I understand that a surplus for the year is being projected. For 1992-93, preliminary forward estimates reveal the following possible financial outcomes.

produce no properties—deficit $358 000
produce one property—deficit $76 000
produce two properties—surplus $206 000

It must be stressed that the 1992-93 figures are preliminary only and will be contingent on the outcome of the Corporation's reassessment of its organisational and management arrangements.

The matter of the repayment of the capital advance is yet to be determined. It is envisaged that further consideration of possible repayment arrangements will occur when the Corporation's three year forward financial estimates have been finalised.

BLACK SPOTS

In reply to **Hon. PETER DUNN** (22 August).

The Hon. ANNE LEVY: My colleague, the Minister of Transport, has advised that under the Federal Government's Road Safety Black Spot Program, South Australia is to receive $11.9 million over three years. In the first year (1990-91) $5.4 million was received; a further $3.8 million is expected for the current financial year (1991-92).

The $5.4 million covered the cost of 96 individual projects, most of which involved low-cost, high-return safety counter-measures such as intersection channelisation, provision of overtaking lanes, installing and modifying traffic signals, shoulder sealing, installing medians with turn slots and installing street lighting at pedestrian crossings/refuges.

The identification and selection of the black spots and their treatment were based on accident data. At each location the accident history over a three year period was analysed and assessed in terms of the numbers of accidents involving personal injury and/or fatalities as well as property damage only accidents. The locations treated in 1990-91 were those having the highest rating based on this assessment.

A total of 11 black spot projects outside the Adelaide Statistical Division costing an estimated $756 000 were

included in the $5.4 million in the 1990-91 black spot program. These projects were:

Local Govt Area	Location	Treatment	Est Cost $
DC Gumeracha	Adelaide—Mannum Road, Inglewood to Chain of Ponds	Modify roadside hazards	75 000
DC Gumeracha	Adelaide—Mannum Road/Gorge Road	Improve sight distance	180 000
CC Port Lincoln	New West Road/Oxford Terrace	Modify lighting	25 000
CC Port Lincoln	Lincoln Highway/Normandy Place	Modify lighting	25 000
DC Northern Yorke Peninsula	Port Broughton—Kadina Road/Kadina—Bute Road	Intersection channelisation	10 000
DC Port Elliot and Goolwa	Noarlunga—Victor Harbor Road	Overtaking lane	50 000
DC Port Elliot and Goolwa	Noarlunga—Victor Harbor Road/Saleyard Road	Widening	80 000
CT Renmark	Sturt Highway	Realignment	200 000
CC Whyalla	Nicholson Avenue	Median protection turns	28 000
CC Whyalla	McDouall—Stuart Avenue/Nicholson Avenue	Modify roundabout	48 000
DC Yankalilla	Noarlunga—Cape Jervis Road	Shoulder sealing	35 000

The programs for 1991-92 and 1992-93 have yet to be approved.

BETTER CITIES

In reply to **Hon. J.C. IRWIN** (22 August).

The Hon. ANNE LEVY: My colleague the Minister for Environment and Planning has advised that discussions on the Better Cities Program are still taking place between Commonwealth and State officials. The proportion of funding has not yet been determined.

The question of the allocation or reallocation of funds is a matter for Commonwealth Government consideration.

GROUNDWATER QUOTAS

In reply to **Hon. R.J. RITSON** (28 August).

The Hon. ANNE LEVY: My colleague the Minister of Water Resources has advised that the action taken has been both necessary and sensible to ensure the sustainability of the groundwater resources of the Northern Adelaide Plains and the survival of the horticultural industry that relies on them.

Throughout this State there are many ground and surface water resources that require careful management in order to conserve them and sustain their use.

The Northern Adelaide Plains Water Resources Committee has developed a management plan, aimed at maintaining horticultural production. This requires the dual steps of reducing groundwater use to a sustainable level, and replacing it with an alternative source such as reclaimed water from the Bolivar Sewage Treatment Works.

Before either of those two steps can be taken it is necessary to bring the level of water allocations into line with the level of actual water use. This is the reduction in quotas to which the honourable member refers. In this instance it will be achieved by calculating each user's greatest use over a five year period and adding 10 per cent to that figure for contingencies. This will not affect the irrigator's production, but does prevent the long term unused allocation coming into use and exacerbating an already deteriorating situation.

SELECT COMMITTEE ON CHILD PROTECTION POLICIES, PRACTICES AND PROCEDURES IN SOUTH AUSTRALIA

The Hon. CAROLYN PICKLES: I move:

That the committee's report be noted.

As members are aware, this committee was first appointed on 12 April 1989, but lapsed when Parliament was prorogued prior to the State election in November 1989. This select committee was appointed on 22 February 1990, and evidence taken by the former committee was referred to it. In this respect, I wish to acknowledge members of the former committee who did not wish to be appointed to the existing committee, namely, the Hon. Diana Laidlaw and the Hon. Trevor Griffin. I am sure that all committee members would wish to acknowledge the very hard work performed by Ms Geraldine Sladden, who has acted as a research officer to the committee. Ms Sladden's efficiency has certainly facilitated the work of the committee. I would also like to acknowledge the work done by Mr Chris Schwarz, of the Legislative Council staff, who has acted as Secretary to the committee.

I wish also to acknowledge the work of the committee as a whole, I believe that all committee members have worked well together and this has, of course, resulted in the final report being a unanimous one. In what has proved to be a very complex and difficult area, members have been able to come from very different social and political perspectives to form a unanimous view on this issue. While all committee members have added their own particular interest and knowledge, I wish to acknowledge the expertise of the Hon. Mr Burdett. As members are aware, Mr Burdett was a Minister for Community Welfare in a Liberal Government and his advice was certainly most helpful, as was his legal background. The Hon. Peter Dunn, the Hon. Terry Roberts and the Hon. Mike Elliott were all able to offer some extremely valuable insight into country communities which the committee found most helpful, and the Hon. Mario Feleppa's migrant background was of particular advantage when we came to deal with problems associated with people from a non-English speaking background. I guess you can say that I added a bit of a gender balance to the committee.

This select committee has dealt with a very difficult issue, and the committee notes this in its report. When looking at the whole area of child protection, the committee's report deals, in particular, with the issue of child sexual abuse because this area attracted the most evidence and clearly was the area to which nearly all witnesses referred. The committee has noted in its report the valuable work done by individuals, as well as by Government and voluntary agencies, in the whole area of child protection and preven-

tion of abuse. From the evidence, it is clear that this is a very difficult area indeed to work in, and I believe that there are many very dedicated people who have put enormous effort into this complex area.

I turn now specifically to the report. The committee has made 28 unanimous recommendations, and I refer members to those recommendations. The first part of the report deals with an overview of the area of child protection policies and procedures. The committee notes that the Community Welfare Act Amendment Bill, which was introduced into Parliament in 1990, gave the following definition of abuse:

> 'Abuse', in relation to a child, means any maltreatment that damages the child's physical, mental, emotional or psychological health, or that places the child's physical, mental, emotional or psychological development in jeopardy.

'Abused' has a corresponding meaning. However, the Bill lapsed when Parliament rose on 12 April 1991 and has not yet been reintroduced. The Department for Family and Community Services interim standard procedures covering 'services to families and child: child protection' gives detailed definitions of child abuse, but these are interim procedures, and the committee has recommended that these procedures be finalised as soon as possible to clarify the exact meaning of child abuse.

In addressing itself to the terms of reference, the committee noted that the most important focus underlying its deliberations was that the interests of the child are paramount. In our report we noted:

> The committee recognises that parents have a duty of care towards their children and when this is not carried out then the State has the right to intervene (where it is satisfied that the parents have failed in their duty of care) in the interests of the child.

Sometimes the rights of parents and children appear to be conflicting, and when we come to the area of legal jurisdiction there is sometimes conflict between the rights of children and the interests of justice. It is in this whole complex area of rights and duties that the committee found its difficulties but I believe that our statement, that the interests of the child are paramount, sends a strong message to the community.

As an individual I originally had very strong convictions about what I considered should be 'justice' for the perpetrators of abuse of children but, based on evidence placed before the committee, I found that the issue was not quite as simple. I wholeheartedly support the following statement by the committee:

> One of the most important findings of the committee is the need to see the issue of child abuse as a community responsibility. It is vital that the community is encouraged to accept this and to act to break the cycle of abuse so that one generation's victims do not become the next generation's abusers.

I think all committee members found the evidence of Alan Jenkins, who is a clinical psychologist with the Eastern Community Health Service, most valuable. Mr Jenkins works with adolescent boys who often begin their abusive behaviour at the age of 13 or 14 years, many of whom have been victimised and sexually abused themselves. In fact, Mr Jenkins gave evidence that at least 20 per cent of all sexual abuse is by adolescents and that between 30 and 50 per cent of these adolescents were victims of sexual abuse as children. So, we must break the cycle if we are to eliminate the sexual abuse of children. How to do this was a matter that exercised the committee.

The committee was made aware of changes to procedures over the period of the committee's sitting, and many criticisms that some members had of former procedures were alleviated over time due to departmental changes. I believe that in that area some of the comments made by committee members helped to facilitate those changes. At this point I wish to touch on two general areas, one being the legal area and the other being the area of resources. The committee heard evidence that the legal area demonstrates conflict between the rights of children and the interests of justice, and made recommendations which it hopes will be constructive.

The issue of resources is, of course, a difficult one at the present time, but I do not believe we can afford to underestimate the longer term social damage, with its attendant high cost factor, when children are abused. To allocate resources now in the area of prevention, justice and rehabilitation will, I believe, save enormous costs in the future.

I would now like to turn to some specific terms of reference. I deal first with mandatory notification. Although the issue of mandatory notification was a somewhat controversial one when first introduced into this Parliament, the majority of witnesses gave evidence that it should stay. Indeed, one agency described mandatory notification as a clear statement by society of the existence of child abuse, its unacceptability and the need to protect children. The committee heard evidence about the need for ongoing training of mandatory reporters and a need to review the system from time to time. The committee supports the retention of mandatory reporting and makes four positive recommendations in this area to ensure that the system continues to work effeciently, effectively and fairly.

I now turn to assessment procedures and interviewing techniques. While we acknowledge the difficulty and trauma for the abused child, and often some other members of the family of the victim and accused, urgent action is required at the assessment procedure stage in order for a resolution to be reached as quickly as possible so as to minimise further trauma during the investigation and a possible court trial.

The committee received some evidence critical of assessment procedures, including the use of anatomically explicit dolls and anal dilation techniques. Family and Community Services gave evidence that its workers are not permitted to use dolls in the interviewing of children and that, if they were to be used, this should only be done by suitably qualified experts and only after allegations have been made. The committee members are, of course, aware of a great deal of interest in these two techniques. The committee noted that on the basis of the evidence received it did not feel qualified to comment on the use of these techniques. Personally, I think it is regrettable that such a debate, particularly in the United Kingdom, over the anal dilation technique, has, to some extent, deflected many people from the real issue—that of child abuse.

The committee's report sets out the procedures undertaken by various agencies when an allegation has been made, and here again I suggest that for more detail honourable members should refer to the report. Evidence was given about the training of social workers and the need to have more expertise in the area of child abuse. Family and Community Services gave evidence that the major restructuring of the department will rectify many of the issues raised in connection with training and conditions of employment of social workers. The committee was concerned at some evidence of unallocated cases and has made a recommendation that all cases should be allocated.

The committee received evidence that there are numerous communication problems in the assessment process. Family and Community Services gave evidence that the new draft interagency guidelines will address these problems. Again the committee notes the need for these draft guidelines to be implemented. In dealing with the issue of assessment,

the committee was particularly impressed at the favourable reports of the Holden Hill model which was set up in 1988 to streamline child abuse investigations and to improve relations between police and welfare agencies. This is described in the report, and I understand that other areas of Adelaide are now using this coordinated approach with some success.

As part of the assessment procedures sometimes decisions have to be made about the removal of alleged offenders. A wide variety of strong views about the pros and cons of removing alleged offenders was heard by the committee. The practice of Family and Community Services is to remove the alleged offender wherever possible. Sometimes the child may need to be removed from the home for safety reasons, but this is done only as a last resort. The department considers the safety and wellbeing of the child to be of paramount importance in this instance. In this area of assessment and interviewing the committee makes recommendations 4 to 8.

Section 4 of the report deals with the recording of evidence and child support services. The fact that the committee has made seven recommendations in this area is indicative of some of the problems presented to it regarding children suffering abuse when they have to deal with the legal system. Many witnesses gave evidence about the trauma to the child when giving evidence in court. Indeed, one witness stated that the trauma that her child suffered in the court was as bad as the trauma she had suffered from long-term sexual abuse. Evidence was given to the committee by professionals and by Judge Kingsley Newman of the Children's Court that the adversarial system of justice does not lend itself well to dealing with children in the court situation. Many witnesses referred to the long delays, the difficulties of proving allegations and the inability of the courts system, set up to deal with adults, to cope with the special needs of child victims.

Another area within the legal system which was of concern to some witnesses was the credibility of child witnesses, and the age at which a child can be a reliable witness. The committee referred to research in this area which shows that very young children do poorly in free recall in comparison to adults and adolescents, and cannot deal with abstract concepts until well into school age. They therefore have great difficulty in answering questions that are framed by lawyers who are used to dealing with adult witnesses. Research shows, however, that a child as young as three can give a true account of events, and the crucial factors are the way the child is approached and the way in which questions are asked.

Some witnesses were also concerned at the way in which the court is set up—the victim has to be in close proximity to the accused (who sometimes may be the child's father). There was a very strong view that children should not have to face the accused in court, but some witnesses felt that any change to this practice would cut across the fundamental premise upon which our legal system is based, that is, the right of the accused to face the accuser. An expert on child protection who recently visited Adelaide, Professor Graham Davies, has stated that it has recently become practice in the United Kingdom for children to give their evidence from just outside the courtroom via a video link in order to enable the child to avoid facing the accused in court.

The very long delays experienced in bringing a case to trial and the low number of convictions were also brought to the committee's attention. Evidence was given by Ms Kym Dwyer, the then Coordinator of the Health, Welfare Child Protection and Planning Unit of the South Australian Health Commission, who told the committee:

> In 1986-87, I think, when I was chairing the Sexual Offenders Treatment Working Party, the figures we obtained from crime statistics were, I believe, 844 people arrested and charged by the police for sexual crimes against children—not just incest situations—and, of these, 14 went to gaol. I think 84 of the 844 actually got to court.

The committee found it difficult to quantify these figures accurately because of the way in which records are kept. The general conduct of the court was also criticised by witnesses. Some witnesses suggested that pre-trial diversion and plea bargaining may help towards a fairer and more efficient system.

Witnesses also saw the adversarial system as being expensive and hostile to children. Judge Newman, who gave valuable evidence to the committee, described the French inquisitorial system as a possible alternative to the British adversarial system in this context. In France, child abuse cases go before a magistrate where every effort is made to find out what actually happened. Social workers work closely with the magistrates in order to provide information on the whole picture and to work out the best way of dealing with it. Evidence was also given, and literature obtained, of the dramatic changes to the legal system in the United Kingdom in dealing with children.

Videotaping was another area of lengthy evidence given to the committee. I understand that the South Australian Child Protection Council is looking at the issue of closed circuit television and will be making representations to the Attorney-General. It may well be that, since the taking of evidence on this issue, a report has already been made. Evidence was also given that the whole court process is very confusing and the Law Society gave evidence that there are no consistent guidelines for social workers coming before the courts.

Another area of concern was the need for education of people working within the legal system in order that they can adequately deal with cases of child abuse and with child witnesses generally. Evidence was given by many witnesses that there is a need to educate all within the system, from judges down. The committee recognised that this whole legal area is extremely complex and that, obviously, a fair legal system must prevail in South Australia. So, in making its recommendations the committee took this into consideration. We thought it would be useful if all legislation relating to children was brought together under one Act. We took notice of the evidence given on the British Act in relation to this recommendation. We also thought that the Government should set up an inquiry to look at alternative approaches to the adversarial system in relation to dealing with child abuse victims. We were also concerned about the long delays in the courts and have made a recommendation regarding this which is clearly a matter of resourcing, and we recognise the difficulties in that area.

Committee members agreed that there was an urgent need for education within the legal system to deal with children and recommended that the subject of child abuse and protection be incorporated into the core syllabuses in law in South Australian universities and that in-service training seminars, presented by experts, be provided for all solicitors, barristers and judges working in the field of child abuse.

I refer now to the section in the report on treatment and counselling services. The committee was told that there is a lack of resources across the board in this area for all those involved: victims, families and the offenders. The police mentioned the lack of rehabilitation in the penal system, and others the high rate of recidivism of child abusers. It is, of course, important to note that there are different

treatments required for different types of abuse: sexual, physical and emotional. Again, evidence was given that the long delays in the court system adversely affect therapy both for the victim and the accused. Witnesses cited the work of Henry Giaretto, from the United States, the Executive Director of the Institute for the Community as Extended Family and Parents United International, who has visited Adelaide for discussions with members of the police, Family and Community Services and other agencies. I was fortunate to meet Mr Giaretto when he was in Adelaide. Witnesses stated that it was vital that perpetrators admitted their guilt in order that therapy be successful. Evidence was given regarding adolescent offenders and I have already indicated the rather disturbing figures in this area. Evidence suggested that there was not a really coordinated policy for dealing efficiently with the therapy and counselling needs of all those involved and that the Health Commission was the proper area to coordinate this; therefore, the committee has made recommendations along these lines.

I have already spoken about the problems of adolescent offenders and the need to break the cycle of abuse; therefore, the committee recommends that, when adolescent offenders admit guilt, accept responsibility for the crime and are agreeable to treatment, with the additional cautionary measure that they are not a danger to their families or society, they should be sent to an appropriate treatment program to be set up as a diversion from the normal juvenile justice system. Such a program is already being run by Alan Jenkins at the Eastern Community Service, as I have already indicated. However, the committee feels that, if offenders do not admit guilt and accept the other provisos of the previous recommendation, they should go through the juvenile justice system in the usual way, but if found guilty they should be assessed for treatment.

I turn now to the reunification of families and guardianship and control orders. In this area of reunification, the committee believes that the interests of the child are paramount, that children must be protected from dangerous situations and that sometimes this involves removing the child from the family. Sometimes, children are placed into foster care and the committee is concerned about the occasional adverse publicity that foster carers receive, and notes the evidence that the majority of foster families do an excellent job. The committee recommends that Family and Community Services continue to promote fostering and receive adequate resources to counsel and train foster families.

The committee dealt with several other matters under its terms of reference, including: representation for children; cultural issues; role of the media; special needs of country people; the physically and intellectually impaired; homeless youth; unallocated cases; organised paedophile groups; and child abuse as a community problem.

In relation to cultural matters, the committee noted the report of the Secretariat of the National Aboriginal and Islander Child Care in 1991 entitled 'Through Black Eyes', which was written by and for the Aboriginal community and suggests appropriate ways of dealing with violence and child abuse. The committee certainly supports such programs. The committee noted that some cultures have different sets of values, but believes that, in the context of dealing with cultural issues, the importance of the human rights of children must remain paramount. The committee received evidence about the role of the media and I hope that some sensitivity will be shown by the media in dealing with child abuse cases that has not been evident so far.

When the committee looked at the whole area of representation for children it was given evidence that children are under-represented when it comes to agencies which take up people's rights. The Children's Interest Bureau protects the rights of children, and it gave evidence that a children's ombudsman might be appropriate in this area. The committee is aware of resourcing problems, but recommends that the Government should ensure that children are adequately represented and their rights protected, and leaves it open for the Government to suggest an appropriate agency to perform these functions properly.

The physically and intellectually impaired was another area of concern for some witnesses, as was the area of homeless youth. Both groups were seen as needing special attention because of their vulnerability. It was noted that the report of the Human Rights Commission into homeless youth (the Burdekin report) highlighted the problem of children who run away from home because they are the victims of child abuse. Evidence on the protective behaviours program run by the Education Department was given to the committee and the committee recommended ongoing consultation with parents in relation to this program.

In conclusion, this committee has looked at some very difficult areas involving very sensitive issues. Again, I thank members for their hard work. The committee has highlighted in its report several times its concern that child abuse should be seen as a community issue and not just placed within departmental, agency or State concern. One of its recommendations is that community care programs could be set up which foster a sense of neighbourhood responsibility and which encourage networks to benefit all generations in the community. We viewed our future generation as a precious resource to be protected by the State, but also by each other.

We do live in a violent society, and we are slowly trying to come to terms with this and, hopefully, to change it. We do not care enough about each other and we do reject life's 'misfits'. We should try to remember what kind of a life some of these kids have had, and what terrible crimes have been committed against some of them. I do not think that I will ever forget some of the stories of crimes against children that I have heard both while I have been on this committee and anecdotally from several other sources. I know that I will be determined to work with all agencies and individuals to bring this serious crime of abuse against children out into the open so that we can face it as a society, come to terms with the problem and also seek creative ways to break the cycle of abuse in order that, in the committee's words, one generation's victims do not become the next generation's abusers.

I believe that the recommendations of the select committee are constructive and sincere and I hope that the community, agencies, departments and the Government will consider this report and that it will generate some positive action.

The Hon. J.C. BURDETT: I support the motion to note this report. I join the Hon. Carolyn Pickles in thanking Ms Geraldine Sladden, the research assistant, and the other members of the committee, and I think that it behoves me to thank the Hon. Carolyn Pickles for having chaired the committee so efficiently and fairly. It sat for a long time. We have before us at present a Bill relating to standing committees. This select committee, as many others have in the past, has been an example of what can be done in committees by people—from different Parties and, in many respects, with different philosophical views—about such a sensitive subject as this. However, we were able to make a

unanimous report, and I believe that the report will be of benefit to the community.

In the course of the committee's proceedings, we heard evidence principally based on the Sexual Offender Treatment Working Party Report of 1988. That report stated:

> For many people, social control of the sex offender is usually equated with imprisonment. This point is undermined by the fact that less than 3 per cent of sexual offenders are even gaoled.

The alarming nature of that percentage—that only 3 per cent of offenders are gaoled—led us to try to get the facts on the percentage of persons who were charged and convicted. We were more concerned about that than the numbers being gaoled. The report refers to 3 per cent of sexual offenders. Does that mean people who were charged, people who were convicted or people who were reported? The alarming thing was that we went to all the proper agencies to try to get this information but, while we got some information, we did not receive sufficient to lead us to conclude the percentage of persons reported, charged or convicted. I think that this kind of information ought to have been available.

The Hon. Carolyn Pickles, as Chair of the committee, and as one would expect, has gone through the details of the report fairly exhaustively and covered most aspects, so I do not intend to try to emulate that. I want to comment on some of the recommendations. The first is recommendation 9:

> That all the South Australian legislation which deals with the various aspects of the law relating to children be brought together under one Act in order to simplify it and to remove injustices caused by the present fragmented and complex system of legislation.

This applies in the United Kingdom. As the Hon. Carolyn Pickles said, we had before us the United Kingdom legislation, the Children's Act, and commentaries on it. There seems to be a great deal of merit in looking at children as a whole. I am sure we all agree that it is a most important topic. Those of us who support the family, as most of us do, agree with the importance and welfare of children. Therefore, it makes sense to look at them as a whole and to bring together in one place the legislation dealing with them.

I do not suggest that all matters or problems in regard to children can be overcome by legislation. Sometimes it can be a mistake on the part of legislators to believe that a problem in society can necessarily be overcome by legislation, because often it cannot. However, it makes sense, as has happened in the United Kingdom, to have a global, cohesive view of children and to provide for them as such in their own right with a paramountcy for their welfare.

I next refer to recommendation 10 (and this was also referred to by the Hon. Carolyn Pickles):

> That, in conjunction with bringing together all the legislation on children under one Act, the Government also sets up an inquiry into alternative approaches to the adversarial system with the aim of making the law more effective in achieving justice for children.

Obviously we must approach this cautiously, and the cautious nature of that recommendation to set up an inquiry will be noted. It does not go further than that. It is fair to comment that our present system of justice has not given a fair deal to abused children in many respects. Although we were not able to obtain the figures, there is no doubt that the percentage of persons who are accused of abusing children and who are convicted and dealt with is low. Many of the problems are in the evidentiary area—the evidence of young children and what weight should be given to their evidence.

Alleged offenders are dealt with in what are basically adult courts with the system used in dealing with adults, where the witnesses are examined by counsel representing the prosecution or the defence and cross-examined. The children are cross-examined. Often young children have the capacity to remember a course of conduct, what happened and whether or not it happened, but they do not remember the time, sequence or chapter and verse. This really creates a problem with which the law has not grappled so far but with which it must grapple.

In connection with this, one of the matters that has come to light recently is that many abused children are very young, and whether or not it happened in the past I do not know. We used to think of 10 to 12 year olds, but we are now thinking of three to four year olds. Their cognitive processes are not very far developed. Should they be denied justice on that account? On the other hand we do not want to depart from the procedures of British justice that a person is innocent until proven guilty—

The Hon. Anne Levy: Australian justice.

The Hon. J.C. BURDETT: It is British justice, too, and that is where it came from.

The Hon. Anne Levy: That applies in many places.

The Hon. J.C. BURDETT: I make no apology for referring to the principles of British justice. We do not want to depart from that, but we do have to grapple with the problems that arise in this area. The alternative approach is to adopt the adversarial system. As the Hon. Carolyn Pickles said, the French inquisitorial system, with a warrant to ascertain the truth of what happened and where there is no onus of proof, is worth looking at, radical as it may seem when compared with our present system of justice. An advantage of that system is the role of the examining magistrate, which brings the court process into the investigative stage of the proceedings at a much earlier stage than happens presently.

The rules of evidence need to be examined. Recommendation 13, which provides that the abused child victim does not have to face the accused in court, is important and has been achieved in many other jurisdictions, circumvented by the use of screens and video or audio equipment. That may be cosmetic but it can have a considerable bearing on the proceedings.

Recommendation 11 states that all cases in the criminal court involving child abuse should be heard as a matter of priority. That is most important. Considerable evidence was given that cases drag on for up to two years or certainly for a long time and that effective therapeutic treatment is often not practical until the criminal charge has been resolved. The fact that the case is heard so long after the event poses another problem for the memory of the child who is said to have been abused and very often has been abused. A child or anyone can remember for possibly two months, but two years imposes a very great burden on their ability to remember.

Recommendation 14 provides that the subject of child abuse and protection should be incorporated into the core syllabuses in law in South Australian universities. Ample evidence was given to justify that recommendation. It was very clear that many people involved in the courts system—lawyers and judges—had no training whatever in dealing with children, in the mind processes of children or in communicating with children. I certainly support that recommendation.

It also became very clear during the course of the committee's proceedings, its evidence and deliberations that it is important to realise that child abuse is a community problem. It is not simply a problem for FACS, the courts or the police. While the procedures of FACS, the police and the courts ought to be as good as they can be in dealing

with the problem when it arises, child abuse will never be even substantially eradicated (I suppose it will never be absolutely eradicated; it never has been) or comprehensively dealt with until the community as a whole recognises it as a community problem and not just a problem peculiar to some unspeakable families. While I do not know exactly how the community can go about it, unless and until the community talks about it and recognises it as a community problem, we will not make the kind of advances that we want to make. For those reasons I support the motion.

The Hon. M.J. ELLIOTT: Child abuse is a far greater problem in the community than many people want to admit. In 1988-89 a number of people approached politicians with complaints about the way child abuse allegations had been handled. The level of those complaints was the significant cause of setting up the select committee on 12 April 1989. In the course of our investigations, it became quite plain that when the Department for Family and Community Services, formerly the Department for Community Welfare, first became involved in children's protection it was not prepared for the task confronting it.

There has been an evolution of the process and policies within the department over the years. It was certainly of note to me that over the past couple of years the level of complaint has diminished dramatically. The level of complaint in the early days was not a fault of the individual employees of the Department for Community Welfare but rather the fault of a system that was not adequately prepared for the role that it had to carry out. Recently, significant progress has been made not only in the Department for Family and Community Services but in other departments, particularly the Police Department. The point is that there is still a long way to go in some areas. It is not my intention to spend too much time covering ground already covered by other speakers and which will be covered by others: we have a comprehensive report covering the issue.

My intention is to point towards the significant problems that remain and need immediate attention. I believe the courts system as it currently operates abuses children. In many cases it aggravates the original damage. To ensure that that abuse does not continue, we need to make some changes. Child abuse cases must be given absolute priority over all others because, until the case is out of the court and completed and there is the opportunity for counselling the children concerned—and perhaps other family members, because some of them are almost as severely affected as the children themselves—there is no hope of attacking the damage that has been done. The longer the process, the greater the damage.

It is important that judges and lawyers who operate in the Children's Court receive special training, because they play specialist roles. I believe that judges and lawyers generally need a great deal more specialist training in various areas, depending upon the courts in which they operate. Quite often, they are asked to make decisions when they lack some of the most important basic knowledge. The adversarial system in the Children's Court is inappropriate. I believe strongly that we should move to some form of inquisitorial system. The children will be far better served by such a process, and justice itself will also be far better served.

The final significant change I would like to see within the courts is the introduction of the use of screens or video equipment so that the alleged victim is not confronted by the accused. The requirement for the victim to face the accused has remained from hundreds of years ago. In the case of a child, it can be a matter of great torment and it can create fear for some children in a witness situation, given that the court situation is already so intimidating.

My next concern is that the accused, whether guilty or not, receives little assistance under the current processes. If the accused is innocent, he or she can suffer a great trauma. It is important that the family and the accused be as fully informed as possible without compromising the investigation. It is also important that, when the decision has been made that the case will not proceed, the alleged offender is informed and, most often, informed in writing.

I refer to a case that was recently brought to my attention, but it does not relate to evidence given to the select committee. In this case, a father came home one day to find that his family were no longer there; he heard nothing from them for eight days. He was contacted eventually, and told that he had been accused of sexually abusing his daughter. In the first instance, I do not believe that there was any justification for the delay. The report was made to the department, and for eight days the father did not know the whereabouts of his family, then he was accused. By that stage he was under a great deal of stress and he signed documentation which gave guardianship to his parents-in-law.

Later, the Department for Family and Community Services found that there was no case to answer. I had the opportunity to speak to several people, and I got the clear impression that as far as they were concerned the Department for Family and Community Services would take no further interest in the case. If the father had asked for custody of the children, the department would not intervene. It is quite clear that the department believed there was no chance of the case being upheld. The unfortunate thing was that by that time the father had signed a custody order, which he had to go to court to overturn. He had signed that custody order under duress.

While the Department for Family and Community Services appeared to have carried out the investigation properly, it did not provide adequate information to the accused, who I think was entitled to assistance as well, about what was happening and why. It is quite clear that the Department for Family and Community Services believed that that person was innocent, but he still had to go through the trauma of a Family Court trial to get access to his children. That is not satisfactory. Earlier, I made the comment that the Department for Family and Community Services has lifted its act overall. However, there are still glitches and that is an obvious example of that. Of course, it is more than a glitch to the father concerned.

Before FACS, many cases remained unallocated for long periods. During the course of our inquiry, we repeatedly asked the Department for Family and Community Services for data, but we never got the numbers. If anything aggravated me, it was the failure of the department to provide that data while it kept saying, 'We are reducing it.' It gave the undertaking that there are no unallocated cases. I do not know whether that is the case. However, the committee has made a clear recommendation that all cases must be allocated immediately. If that requires extra resources, so be it. I am not suggesting that the problem rests with the Department for Family and Community Services in the first instance; it may simply be a matter of whether or not the Government has allocated sufficient resources to enable the department to do the job that it has been asked to do.

Unallocated cases are important for a host of reasons. Quite clearly, if there has been an accusation, one has to make a decision very quickly as to whether or not there appears to be any substance to it. If not, the case can be shelved. If there is some substance, it can be proceeded

with to finality, one way or the other. However, simply to leave it pending is not acceptable.

Although FACS is rapidly defining its role as a caring agency rather than a prosecuting agency, there was a time some years ago when social workers were given a wider role than was necessary. The depth of investigation they carried out was too great. Once they believed there was a *prima facie* case, it was important that they brought in the police immediately. I recommend that interested members have a close look at the Holden Hill model: it is a model of cooperation between the police and the Department for Family and Community Services in Holden Hill. It appears to be an effective model. It solves a range of problems, and it is something to which the committee alluded in its report and which is covered substantially in evidence. It appears that it will be adopted progressively throughout the State, and I suggest the quicker the better.

Finally, I have a concern that insufficient effort is going into preventive programs. Our greatest effort at this stage is after the event: after there has been an alleged abuse we act. Quite clearly if there has been an alleged abuse we must act, but that is substantially what our child abuse programs are all about: they are after the event programs. It is important that we become far more active in programs that prevent the abuse occurring in the first instance. We need more community care programs that bring together the aged and the young, with members of the community helping each other. We have a community in which individuals are increasingly being isolated and lack support. Anything the Government can do to facilitate community care programs should be encouraged.

The Department of Family and Community Services has an interesting program now running in the Elizabeth area where it is helping to provide skills to some people who clearly do not have parenting and household skills. The more of those programs the better, because clearly some people are not adequate to the tasks that are required of them. One hopes that those sorts of programs will be refined and spread rapidly throughout the State. There is a need to intervene and to break the cycle. We have noted that adolescent offenders need to be identified and, where appropriate, placed in treatment programs. Too often adolescent offenders are treated as sexual experimenters almost and the position is taken that they will grow out of it. However, that sort of attitude really is not acceptable. It is a matter of whether or not they are willing to be involved in treatment programs and admit that they have a problem. If not, they then face straight-out prosecution.

It is also clear to me, from the evidence that the committee received, that rehabilitation programs which are curently offered, particularly through the prisons system, are totally inadequate. Once again, we need to put greater effort into this area. Two types of adults are involved in child abuse. There is no doubt that paedophiles are extremely difficult to rehabilitate. But, for those who offend within a family and where re-offence is possibly less likely, I believe that the greatest effort should be made in relation to rehabilitation.

I said that I would make a brief contribution. It is my intention to concentrate on the areas that I believe still need further attention. I support the motion to note the report. I hope that it is now quite clear that this select committee has not been a witch-hunt. When it was set up very clear problems were in existence. I believe that many of the problems have been solved, but there are still some significant ones. I do not believe that the Government or society should think it can rest on its laurels because a number of significant actions are still necessary.

The Hon. M.S. FELEPPA: In supporting the noting of this report I wish, first, to congratulate the Hon. Ms Pickles, the Chairperson of the committee, for the way in which she chaired the meetings and her unbiased attitude towards every member of the committee. Similarly, I wish also express my personal appreciation to our research officer, Ms Sladden, for the excellent work she has done and her great contribution to this report. I also wish to express my appreciation to the Secretary, Mr Schwarz, to everybody in *Hansard*, and all the witnesses who appeared before the committee who offered their time and evidence which have been a vital part of this report.

I draw the attention of the Council to an aspect of the subject that is not in the terms of reference given to the committee. The first term of reference deals with the notification of suspected abuse of children. The other terms of reference stem from the word 'abuse'. The four kinds of abuses cited are physical abuse, emotional or mental abuse, sexual abuse, and neglecting the needs of the child.

Abused children are victims of crime and are in need of care and protection because of their tender age and their dependence on the family and adults for their daily living. The committee was mainly concerned about these children because abuse in the family situation is usually perpetrated by a parent, close relative or a friend known to the children. Abduction and abuse by a stranger, in my view, is a different situation. When this occurs the child by all means needs protection from the trauma of a court proceeding and help during rehabilitation. The committee, I believe, was extremely concerned about this. But, where the crime is committed within the family circle, special circumstances arise and special needs, care and protection have to be considered. Not only are practical and administrative protection of children needed but also there should be protection by statutory law.

It appears from the evidence presented to the committee that at least three Acts of Parliament will have to be amended in order to implement the recommendations of the committee. Section 99 of the Justices Act 1921-75 deals with protecting the child by separating the child from the abuser and restraining the defendant from having access to the child. This section, I believe, will have to be amended. Sections 72 and 73 of the Community Welfare Act 1972-75 deals with offences of neglect and the ill-treatment of children. These sections are in subdivision 7, which is entitled 'Protection of children'. But, when one reads the sections one finds that they are concerned more with the fact of a crime than with the protection of children: that the protection of children is only secondary to the matter of the crime.

Section 19 of the Children's Protection and Young Offenders Act 1979 is supposed to deal with children suspected of being in need of care or protection. The full title of this section is 'Detention of children suspected of being in need of care or protection'. When one reads the section one finds that it is more concerned with the detention of the child and holding the child in custody than it is with caring for or protecting the child. The whole of this Act is of little use for a child who is a victim of crime and not an offender. Looking through the summary of provisions of the Act, it is obvious that it is all about young offenders and only indirectly applicable to the child victim of crime.

When the committee was taking evidence, some witnesses focused on young offenders, not on the child victims. Others had to be asked if their evidence was about child victims of abuse or about young offenders. Confusion could arise with such evidence. At one point there was a need for clarification of such evidence.

One witness spoke about in need of care cases, but it was difficult to know whether he was speaking about child offenders who had committed a crime for which they had been brought before a court and had to suffer the trauma of appearing in court or whether he was speaking about a young victim who suffered a similar trauma by appearing in court as a witness. Both are in need of care cases, but they are of quite a different order of in need of care. Those kinds of care and protection are poles apart and should be treated so by statutory law.

It has been necessary to provide legislation to cover young offenders. Their legal concerns are spelt out in section 104 of the Children's Protection and Young Offenders Act. The protection here is the protection for the young offender. When we look at the child victim of crime under the three Acts mentioned, it is as if the child victim is a criminal or almost a criminal just by being a victim of a crime. That being the situation, the law, in my view, has little respect for children by putting together in the same legislation protection of the child offender and the child victim.

If we adults were treated in that way, we would think that the law has little regard for us as adults. Let me give an example, Mr President. If you reported to the police that your car had been stolen and, as a victim of crime, you were told that you contributed to the crime and that the fault lay with you by owning the car that was stolen, you would doubt the justice of the situation that bound you, the victim, to the criminal and to the crime. You, Sir, would think that that attitude towards a victim of crime was ridiculous, and we would quickly have to clarify the law.

That attitude is equally ridiculous where a child victim is concerned. As the law now stands, a child victim of crime is supposed to be protected by on Act of Parliament designed to deal with child offenders. Whilst not specifically covered by the terms of reference or contained in the recommendations, it would be better, in my view, if child victims of crime were protected by a separate Act of Parliament that could cover their particular circumstances.

As has been said, the report recommends unifying the law in respect of children under one Act of Parliament. This is admirable, but perhaps it would be difficult to implement. Sir William Blackstone in his 'Commentaries' says that the responsibility of parents for their children is divided into three main areas: education, maintenance and protection. Education is covered by its Act, and the welfare of children is covered by that Act. The protection of children needs to be covered by a specific Act of Parliament. There could be, and perhaps needs to be, a Children's Protection and Young Victims of Crime Act. This Act could contain all the 'musts' and 'must nots' and the 'mays' and 'may nots' to give adequate protection to the child, particularly to child victims of crime.

In addition, it could also contain the 'shoulds' and 'should nots'. By that I mean that it could spell out the responsibilities and duties of parents towards their children and the responsibilities and responses of children towards their parents, families and society. It could be a kind of declaration of rights and obligations of children and parents. As an example, I cite the Chinese marriage law and the Italian constitution, just to mention a couple. We have no such declaration in this country in our Federal and State Constitution Acts. In my view, such a declaration could be inserted in the Act and used to teach responsibility towards society by emphasising the duty to give care and protection as being lawfully enforceable and to exchange love, affection and emotional warmth as lawfully appropriate. I commend the report to the Council.

The Hon. PETER DUNN: I wish to make a few quick comments in support of the report. I became a member of the committee halfway through its life, and it was certainly an eye-opener to me. The mere fact that we had to have this committee indicates to me that society is rather sick. I live in a world in which I have handled animals for a long time. I notice what goes on in the animal kingdom parallel with what happens in this sick part of our society, which has caused this committee to be needed, but we are intelligent beings and those sorts of things should not happen.

It is interesting to note that at one of the places visited by the committee FACS supplied about 10 or 11 people to teach 20 families to budget, buy food and do the every day things that you, Sir, and I take for granted. I thought that was the crux of the matter, because it is at that level that problems often occur. Recently, we observed violence in our community at the football. We saw an instance of this the other day, and we have seen a lot written about it, even in today's *News*. This committee looked at violence in all its forms. I do not condone violence under any conditions, but violence at the football is totally different from the sort of violence about which we are talking here. Violence at the football is amongst peer groups—men who like to use a little vigour.

The Hon. R.R. Roberts interjecting:

The Hon. PETER DUNN: I am helped by a member opposite who says 'macho men', and that is true: they are being violent in a funny sort of way, but I do not think that they are terribly unhappy about that. Some of them believe that they have won and some that they will win later. However, older people violating younger people is not acceptable in our community, and I do not agree with it. My education was enormously enhanced by sitting for a period of time on this committee.

The committee was set up because it was deemed by the Department for Family and Community Services that this matter needed to be scrutinised. Certainly, the department did not come up smelling all roses, but generally I think there has been a change in direction and that the organisation of FACS is now working reasonably well. There has been an emphasis in this committee on what happens when an adult is accused of abusing a child in some way.

The crux of the matter is that we have been very slow in getting them to court, letting them off if they are thought to be not guilty or charging them if they are considered to be guilty. When I looked at the whole operation I saw recommendation 11 which, in effect, says that we should speed up the process of accusing or letting go free. That is a very important part of it. If we have long periods between accusation and judgment, people have a long time to ponder what they have been doing and they often get off in the wrong direction. We saw that with the witnesses who came before the committee. Therefore, I strongly support recommendation 11 to speed up the process of judgment.

The Hon. John Burdett mentioned the French adversarial system. I express some support for that. I think that we could get a nice mixture somewhere along the line. I do not think that it is readily available now, but it will happen in future.

The use of electronic recording systems keeps all people honest. In the past, those with an axe to grind have led young children down the path that they thought they should go by putting words into their mouths. If we use electronic recording devices for interviews, that problem will be overcome.

I take an interest in country problems. There are problems in the country as distinct from the city. The main problem tends to be the isolation. If an adult, a parent or a teacher

in the community suspects that there has been abuse, there is some difficulty because people in those small communities have to live with one another and real problems are created. If someone in such a community is accused, that person tends to become ostracised. Sometimes they are unfairly accused or they are found not guilty, and there is a real problem. Careful consideration needs to be given to people in the country. However, if they have committed an indiscretion, they should feel the full weight of the law.

The committee worked long and hard for its result. I thank the Hon. Carolyn Pickles for her chairing of that committee. I also thank Geraldine Sladden and Chris Schwartz for the work that they put into it. It was sometimes hard to get us all together. However, we considered long and hard and the resulting report is substantial. I am not sure that it is as strong as it could have been. Of course, I was on that committee and perhaps could have had more input. However, I think we could have had more specific conclusions. The report is suitable for the time. For those reasons, I support the motion.

The Hon. DIANA LAIDLAW: As the mover of the original motion in 1989, which was finally passed by this Council on 28 February 1990, I am particularly delighted to see that the Select Committee on Child Protection Policies, Practices and Procedures in South Australia has reached a unanimous conclusion. At the time I moved for the setting up of the select committee, the issues relating to child abuse were particularly controversial in the community. I think it is a sign of growing maturity on the part of the department, the media and all people generally in the handling of some of these issues that the committee has been able to reach a unanimous conclusion on the matter.

I was prompted to speak following the remarks of the Hon. Mr Dunn who I was pleased was able to replace me on the committee as an active member last year. He mentioned that perhaps some firmer conclusions could have been developed, that some time limits could have been defined and that there should have been more responsibility for the enactment of various resolutions. I believe that is so, but even more important in this matter was reaching a consensus. I hope that we have all learnt through our experiences on this committee and through reading this report. I believe that protection policies, practices and procedures in relation to children in this State will be better as a result of this exercise.

The Hon. T.G. ROBERTS: I support the motion. I, too, thank the research services provided by Geraldine Sladden and the work done by Chris Schwartz and other members of the committee. It was a difficult committee to work on. It was made easier by the people with whom we worked, but the subject matter was very difficult. As individual members of the committee, I think that we attracted a lot of personal attention from people who were in the process of trying to straighten out their own houses in relation to some of the problems associated with child abuse. I found that some of the problems being raised by people whom I had been seeing as a member of Parliament during the course of the committee's deliberations were being addressed by the committee. Some of the people who were seeing me actually appeared before the committee and were given the opportunity to state their position in relation to the difficulties that they were having, and the committee took all their evidence into account. Some people caught in the system were frustrated that they did not have a forum available to them to state their cases and felt that their experiences could assist the committee in making its recommendations. I hope that those witnesses, plus the departmental witnesses and all the professional people who appeared before the committee, are happy that the summary of recommendations includes references to the points that they raised.

Reference was made to the way dolls are used in interviewing procedures in order to establish guilt or innocence. The difficulty there probably epitomises many sections of the evidence that we had. Internationally and nationally, the jury is still out. As an individual member of the committee, I did not feel that I could make a considered judgment based on the evolutionary information that was starting to come through on the important area of establishing guilt through evidence. I paid a lot of attention to the detail that was given in evidence that would improve awareness of prevention in all its cycles. An educational role can be played in the recommendations that we make in providing information to mandatory notifiers and trying to build up an awareness of those people in the front line who come into daily contact with children to recognise the signs particularly of physical abuse which are more outward.

Emotional abuse is much more difficult to recognise. In fact, by the time emotional abuse is recognised, in many cases it is too late. That is a private opinion, not supported by the evidence that we had before the committee.

I suspect that it is the case that by the time the emotional scars are able to be seen and picked up, in many cases it is far too difficult to come to terms with or treat the problems associated with that abuse. However, physical abuse is far easier to pick up. The only difficulty with which the committee had to grapple was in educating the front line people—the doctors, teachers, nurses, CAFHS, Community Welfare, FACS and other people working in the field—that it is difficult to differentiate (and I suspect that the Hon. Bob Ritson would agree) between the knocks and bruises that children get in the playground and around the place and the knocks and bruises they get from over zealous parents.

The Hon. R.J. Ritson: It is difficult to know what is reasonable suspicion.

The Hon. T.G. ROBERTS: That is the case. It is up to the front line notifiers to do their homework, to ensure that they differentiate and, in many cases, bring forward their notifications in a way in which the child's rights and protection are paramount. We are probably better off erring on the side of bringing it forward for investigation rather than being conservative and waiting, if the bruising and trauma continue.

Most anecdotal evidence I have been given, both as a member of Parliament and in the community, particularly in closed communities as the Hon. Mr Dunn has suggested, is that there are identifiable children in such communities who can be regarded as receiving unnecessary physical abuse in parents' attempts to instil discipline into a child's lifestyle. By the time a pattern of abuse gets to the point where bruising and physical abuse takes place to try to instil discipline, the respect inside that family relationship has broken down to a point where scars will show not only on the body but emotionally.

The Hon. Diana Laidlaw: They need help.

The Hon. T.G. ROBERTS: That is right, the parents need help to gain the respect of the child in the relationship. That is where the cycle starts to take over and where the abused becomes the abuser in the next cycle. As others have said, it is incumbent on society generally to be supportive of the parents who find difficulty coming to terms with their children and to support the system in their efforts to

show them that their responsibilities are not only to the family network but also to society.

I tend to disagree a little with the Hon. Mr Feleppa in that I am not sure whether we can legislate for a caring society with love, care and attention. Although Governments can provide the infrastructure, the umbrella and good intentions under appropriate legislation, I am not sure that legislation itself can come to terms with that. If other influences impact as they do in times of recession and financial and economic difficulties, I am sure that the cycle of abuse and hardship starts to emerge inside families. The overall responsibility for Governments is to ensure that, to minimise the difficulties associated with raising children in that sort of economic climate, people should be helped by infrastructure support programs that the Government can offer. In assisting parents with support structures through Government agencies, South Australia is well served by very good agency groups through health education and Family and Community Services. I suspect that we tend to be a little critical in our assessments on the basis that we set our standards very high in this State. When one makes comparisons internationally with most other countries or with interstate services, South Australia matches up very well and in many cases leads the nation in standards it sets for the support services provided.

When the committee was first set up a deal of soul searching was done on how to come to terms with the rising incidence of both physical and sexual abuse of children. On hearing evidence over a long period from departmental officers, it was clear that an evolutionary process was taking place and the departments themselves were trying to come to terms with the increase in notifications. That is where the mandatory notification programs were starting to have some impact, although we received evidence that some mandatory notifiers were not notifying as often as they should have been and notifications were rising with support services for people working in that difficult area being stretched. It was a matter of the providers working out what were the best areas with which to provide services. I and other members of the committee go back to prevention resources, where we must consider the creation of a caring society. That is where I have some difficulty about legislating to do that.

The Hon. Diana Laidlaw: The goal is right.

The Hon. T.G. ROBERTS: The goals set in legislation may be right and may be pointers, but in society generally nobody looks to see whether the guidelines and goals set out in legislation apply to them. That must be provided by leadership and example. All of us have a role to play, including the media, Government agencies, church groups and voluntary organisations. On evidence we took, voluntary and Government agencies seem to be working well together. As well as thanking the research staff, other members of the committee and the Chair, I pay tribute to people working in the area itself. It is not like any other job.

The Hon. Bob Ritson may come into contact with this issue frequently. The job involves trauma. Not many professional people are available for the carers to turn to, other than in-house, in order to discuss and get understanding from people in the community. My sister-in-law is a child psychiatrist and she has difficulty unwinding. If she talks about some of the work it must be in general terms and cannot be specific or identifying. I am sure that many professionals in-house have the same problem and have to talk about case work rather than work they do on an individual basis. That makes it difficult for them to debrief as in most other walks of life where one can knock off and walk away.

People working in the industry, for example, the police, Department for Family and Community Services workers, psychologists, doctors, nurses and CAFHS staff, carry around with them a lot of emotional trauma, and that is a very heavy burden. The changes taking place are starting to have an impact on attitudes generally in communities where one could say that some people are in a higher risk category than others. Physical abuse and neglect is probably easier to identify than child sexual abuse or psychological abuse. The committee did not receive any evidence that any section of the society was completely free of those symptoms. Although some areas could be identified as having a heavy concentration of victims, not one part of the metropolitan area or the country was completely free of any of the symptoms.

I lived in a small country town for many years of my life, and my home was a refuge. My mother was a generous person and, although we had very little ourselves, our home became a refuge for a number of children whose mothers had been stretched to their limits. That is the way of country life: if you identified someone as having difficulty in their family within a stone's throw from your home, you would take in one or two children for a few nights until you found out whether it was all right for the children to go back. However, that practice is very difficult in a city the size of Adelaide.

Government services have picked up and are playing a supportive role in respite, temporary and/or foster care. Those services are doing as good a job as possible identifying those children who need either temporary or permanent placement. The various models were explained to the committee, and although there are difficulties in matching and briefing, the problem is being dealt with. There is no automatic answer to the question whether a child should be left within a family because of possible danger or whether he or she should be removed. However, the committee's view was that the offender should be removed from the home. If there was a recurrence or if the child was at risk, the committee held the view that that could exacerbate an already difficult problem within a family relationship.

The Hon. R.J. Ritson: It is very traumatic for a child to lose a parent in that way.

The Hon. T.G. ROBERTS: It is very traumatic to lose a parent if that relationship has broken down. However, the committee believes that, if a child is at risk of further sexual or physical abuse, assessments must be made about whether that abuser rather than the child should be removed from the home, because removing the child from the home also upsets the rest of the family.

The Hon. R.J. Ritson: Don't you think that treatment of the abuser to eliminate the risk is perhaps the most desirable thing to do, if possible?

The Hon. T.G. ROBERTS: I think I get the gist of the interjection, that the preferred option is to treat the abuser in the home rather than away from the home. That model can work in some cases if the abuser himself fronts up to the problem. However, if the abuser leaves the home and continues to harass the family, that is a no-win situation. It is those difficult case histories that people in the field must come to terms with and make judgments about, and which, in many cases, the media and others are interested in because there is no easy solution to the problem. It is a matter of making assessments and making the recommendation that best suits the model in that family circumstance. The recommendations go a long way to build a case or a model on which to work in this State. It makes recommendations in regard to prevention, treatment, the justice system and incarceration, if required.

In relation to the privacy matter associated with the files of regular offenders, I know that there is no guarantee that that information will not be used in other forums against the perpetrators. However, technological advances are being made to computers, for example, computer passwords and keys, so that information can be kept on record without its being broadened out into other arenas or its being transferred between departments. I believe that, if paedophiles are operating in an organised way, moving between defenceless families, particularly single mothers, who are potential victims, that information should be used in a way to protect the children from those who prey on innocent families. It is the child's and the potential victim's rights that should be paramount. If it is a one-off occurrence, an in-house family case, I do not think that information needs to be put on file if the offender is being treated with the possibility of rehabilitation.

The Hon. R.J. Ritson: What are the circumstances where an accusation is made, and it is found to be unjustified, but the fact of the accusation leaks out into another forum years later?

The Hon. T.G. ROBERTS: The recommendation in that regard is that letters must be written and exchanged. After a case has been investigated and if it is seen to be false, the accused will be given notification in writing. That is happening in some cases, yet in other cases it is not happening. We are making the recommendation that it should happen. With those words, I support the motion.

The Hon. R.J. RITSON secured the adjournment of the debate.

ROAD TRAFFIC (SAFETY HELMET EXEMPTION) AMENDMENT BILL

The Hon. DIANA LAIDLAW obtained leave and introduced a Bill for an Act to amend the Road Traffic Act 1961. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

The Bill provides for a number of exemptions to the compulsory wearing of safety helmets by cyclists in South Australia. The exemptions relate, first, to a person who is in possession of a current certificate signed by a medical practitioner identifying that for medical reasons or for reasons of physical characteristic it would be unreasonable to require the person to wear a safety helmet and, secondly, to a person who, because of religious affiliation or membership of a cultural group, is wearing a headdress which makes it impractical for that person to wear a safety helmet.

The above exemptions already apply in Victoria and New South Wales following moves in both States over the past 18 months to enact legislation to make the wearing of safety helmets compulsory for pedal cyclists. In Queensland regulations provide for exemptions on the basis of a physical characteristic. The Liberal Party maintains that cyclists in South Australia are entitled to the same regulatory standards that apply elsewhere in Australia, particularly so when one recalls that the move to make helmets compulsory was part of a Federal Government push to enforce national uniform standards of safety on our roads.

The compulsory bicycle helmet proposal was an integral part of the Federal Government's 10 point 'black spot' road safety package agreed to by State and Territory Transport Ministers at a meeting of the Australian Transport Advisory Council (ATAC) in May 1990. Most elements of this package were debated in this Parliament in February and March this year. At that time the Liberal Party supported the move to make it compulsory for cyclists to wear safety helmets. We recognise that the use of helmets is a critical factor in both preventing and reducing the severity of head injuries. Research has identified that both motor cyclists and pedal cyclists are more prone to head injuries than any other type of road user. With the compulsory wearing of helmets it has been estimated that up to 75 per cent of pedal cycle fatalities could be prevented, with serious injuries decreasing by up to 40 per cent. The Liberal Party is determined to see that these estimates become a reality. In no manner or form can the Bill that I introduce today be interpreted as a back down from this commitment. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

CORPORAL PUNISHMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

That regulations made under the Education Act 1972 concerning corporal punishment made on 30 May 1991 and laid on the table of this Council on 8 August 1991 be disallowed.

This motion is about the regulation in relation to corporal punishment in State Government schools. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

SOUTH AUSTRALIA'S BIRTHPLACE

The Hon. I. GILFILLAN: I move:

1. That this Council officially recognises—
   (a) Kangaroo Island as the birthplace of South Australia; and
   (b) Glenelg as the site for the inauguration of Government.
2. That the Government officially recognises the above in all official documentation.

I would like to place on record my appreciation of the help of the Hon. Diana Laidlaw and the Hon. Robert Lucas in enabling me to move this motion at this time while I have in your gallery, Mr President, some people who represent the Kangaroo Island Pioneers Association and some friends of mine of many years from Kangaroo Island, Ron and Jean Nunn. Jean Nunn is a well-known historian who has written two significant books—

The PRESIDENT: It is not usual to refer to the people in the gallery.

The Hon. I. GILFILLAN: In that case, Mr President, I will not do it again. The human history of Kangaroo Island is long, rich and colourful. It is full of stories and legends which tell of great human endurance, suffering, success, abject failure, courage, bravery, ingenuity and mystery. From its intriguing past, Kangaroo Island emerged with a pre-eminent role in the breathing of life into the newly created Province of South Australia when the first South Australia Company immigrants landed on the island on 27 July 1836 from the barque *Duke of York*.

This was the first of a flotilla of eight ships which brought several hundred eager immigrants of quality and standing to the province—many to Kangaroo Island—before the *Buffalo* arrived with Governor Hindmarsh in November 1836. Most of these people were never to see their homelands again. Failure, privation, hardship and heartbreak were the lot for many of these stoic folk and an early death was often the reward for exhausting and unremitting toil. Many lonely island cemeteries stand testimony to the deaths of brave young women in childbirth and to their menfolk

who literally worked themselves to death to carve a life out of the harsh, unyielding bush and to build homes for despairing families. The enduring Kangaroo Island community does not therefore deserve to be denied its rich pioneering heritage in the face of spurious claims by Glenelg to be the birthplace of South Australia—for indeed it was not.

Kangaroo Island's role in the European history of South Australia is longer by more than 30 years than any other part of the State. As far back as 1802 Matthew Flinders, on an official survey, charted Kangaroo Island and its waters. The French sailed its waters and encountered the British expedition during this period. In 1803 an American landed there and, during a lengthy stay, built a ketch. In the next 30 years before official settlement came a collection of sealers and whalers, salt gatherers, escaped convicts, ship deserters and people of quality who found genuine appeal in the solitude that the island had to offer. In fact, the back two rooms of my house on Kangaroo Island were built by a former seaman, Nathaniel Thomas. He was on the island in 1815, lived there his whole life, married and had children, and his descendants are still on the island today. Indeed, from amongst these early white settlers rose up an unofficial leader, Robert Wallen, known locally as Governor Wallen.

It was no accident that our first official settlers landed at Nepean Bay on 27 July 1836: they had been sent there by the South Australia Company with express instructions, labour and materials to physically establish the new Province of South Australia at what was then named Queenscliffe (later Kingscote). This they immediately set out to do and, in the journal of Samuel Stephens, Manager of the South Australia Company, we read:

> I was the first to set foot in the land of South Australia and proclaim the establishment of the colony.

This is irrefutable evidence from our State Archives that Stephens was sent from England to start the new colony at Kingscote. The first ships did not arrive there by accident. Stephens did not proclaim the colours and raise the British ensign for any other reason than his instruction from the English Parliament and the South Australia Company. Stephens' journal entry for 14 August 1836 also reads:

> This morning I hoisted for the first time the British Admiralty ensign and decorated with the company's flag and colours a booth which I had prepared for the performance of divine service.

As a result of the landing of the first settlers from the ships to arrive there before the Governor, and because the South Australia Company people lived there for so long, there were many firsts for Kangaroo Island—the first buildings, the first jetty, the first homes, the first school, which was conducted in the open under trees, the first fruit trees, and the first cemetery which was established tragically very early in the life of the settlement.

Two marriages are celebrated on 28 August and 24 September 1836. How could it be that the colony was not established until 28 December when the first two marriages were celebrated three or four months earlier? It sounds to me like the first settlement, which it certainly was: it was official, it brought life and it became the infant colony of South Australia. If we deny this, could we face those first settlers today? Would they understand and accept a concept of Glenelg as a birthplace for the colony when they had done it all some five months earlier? I think not.

Despite all the hardships, the hardy spirit of the first pioneers prevailed and they fought on for some 40 years before the South Australia Company, because of the harshness of the Kangaroo Island environment, decided to move to the mainland, taking many of the early settlers with them. The establishment of the colony on Kangaroo Island was not the onset of labour before birth, so flippantly alluded to by the Hon. Anne Levy in her reply to my question on this subject on 27 August, but the fight for life of a struggling infant colony. Now, 155 years later its proud descendant, the Kangaroo Island community, continues to struggle for its rightful place in South Australian history. This situation cannot be allowed to continue and this Government has the power to act now through a motion of this Parliament to correct it for this generation and all generations to come.

So that there can be no doubt as to Kangaroo Island's claim to be the birthplace of South Australia I will lay before this Council the historical facts surrounding the events leading up to that historic day in July 1836.

12.7.1834—London. House of Commons approved the South Australia Colonisation Bill.

15.8.1834—Royal Assent was given to establish a Crown Colony of South Australia.

22.1.1836—South Australia Company was established with paid-up capital of £200 000 to provide manpower and material for the new colony.

15.2.1836—London *Gazette* of 2 February 1836 notified appointment of Captain John Hindmarsh as Governor.

19.2.1836—Letters patent were issued to erect and establish South Australia as a province. (The original manuscript of this major historical event is held in the public library of South Australia.)

The Hon. Anne Levy: It is the State Library. It changed its name a number of years ago.

The Hon. I. GILFILLAN: I stand corrected. No doubt *Hansard* will make the appropriate alteration, because I want this speech to be accurate in every detail. I thank the Minister for her helpful interjection, and I hope the Chamber recognises the accuracy of the rest of the material that I am sharing with members. The events continue:

23.2.1836—Order-in-Council approved creation of a council to govern South Australia. His Majesty's powers were conferred to empower the Governor in Council to make laws, institutions and ordinances in the new province of South Australia and to impose a levy for rates and taxes, etc. The document concluded that Lord Glenelg, a Principal Secretary to H.M. King William IV, was to give the necessary directions ensuring all laws, ordinances, etc., were to be in accord with all directions and instructions issued by the King. Some appointments to the council were notified publicly on 13 July 1836.

11.7.1836—Letters patent (commission) were issued appointing Captain John Hindmarsh as Governor of South Australia. That manuscript is also in the State Library.

27.7.1836—(and that is the event that needs a drum role) first immigrants arrived in the South Australia Company ship *Duke of York* to establish the new colony of South Australia on Kangaroo Island.

28.12.1836—Governor Hindmarsh presented his commission and formally inaugurated government in South Australia. Proclamations were made requiring all to obey the laws and declaring equal rights for Aborigines. This was the final act necessary to formalise the already existing colony—a colony conceived and proclaimed in England but given birth and settlement on Kangaroo Island on 27 July 1836. On 28 December 1836, Governor Hind-

marsh presented his commission and inaugurated government.

On 6 January 1837 Hindmarsh, reporting to the Secretary for State for Colonies in England, confirmed what actually happened at Glenelg a few days earlier. He wrote:

> On the morrow, being the 28th, I took possession at Glenelg and, after reading my commission establishing the council and complying with all other formalities prescribed by my instructions, saluted His Majesty's colours with 21 guns.

The Colonial Secretary, Gouger, wrote in his journal concerning the events of 28 December 1836:

> We then held council in my tent for the purpose of agreeing upon a proclamation requiring all to obey the laws and declaring Aborigines to have equal rights and an equal claim with white men upon the protection of the Government.

It is reasonable to think that Governor Hindmarsh and his Colonial Secretary, Gouger, aware of all the necessary formalities and procedures, would not have assumed responsibility for doing anything that had already been performed by higher authority unless the Governor had received definite and specific instructions to do so. There is no record of any instructions having been given and the reference to the 28th as the anniversary of the Proclamation of South Australia is neither officially nor historically correct.

I suggest to members that the day we currently call Proclamation Day (28 December) was of greater significance to Governor Hindmarsh and his fellow colonial officers than it was to the already existing colony of South Australia because they would then be on the payroll and able to get on with the job so eagerly begun by others some five months earlier on Kangaroo Island. To be pedantic, the State could celebrate anniversaries of proclamation on either 15 August or 19 February, recalling the passing of the South Australian Colonisation Act in August 1834 or the issuing of letters patent in February 1836. More properly we should formally recognise and annually celebrate Statewide 27 July to mark the arrival of the first settlers and establishment of the colony of South Australia on Kangaroo Island.

It is salutary indeed to note the reaction in England of a frustrated George F. Angas, Chairman of the South Australia Company, to the establishment of the colony without local leadership at viceregal and Government levels. He wrote:

> Has it ever been known in the history of this country that so large a body of settlers as the company is sending out has proceeded to a colony established by Act of Parliament without any Governor or Government office to keep the peace? Should any mischief arise, someone will have to give account.

This again is irrefutable evidence that Kingscote, Kangaroo Island, witnessed the birth of the colony long before the Governor appeared.

In 1986, 150 years later, during our Jubilee celebrations on 27 July, a plaque was unveiled on the island with the following inscription:

> This plaque commemorates the gathering together of South Australians at Reeves Point to mark the occasion of the 150th anniversary of the arrival at this place on 27 July 1836 of the first organised group of permanent settlers to the newly established colony of South Australia. May their pioneering spirit and enterprise be long remembered by all who visit and contemplate this fact. (Unveiled by His Excellency Lieutenant-General Sir Donald Dunstan, K.B.E., C.B., Governor of South Australia, 27 July 1986).

Surely, 150 years later, this gives clear tacit viceregal recognition of the site of the cradle and birthplace of a colony legally well established long before even the first settlers arrived and certainly before Governor Hindmarsh arrived. In light of all the known facts surrounding the first settlement of South Australia, it is of considerable concern that at the highest level of Government these facts are, at times, erroneously portrayed for the continued confusion of all, particularly children, who have, like us before them, been fed an educational diet of Glenelg as our birthplace and the *Buffalo* as 'bringing the first settlers'. To give an example, I quote from a letter from the Premier written in the lead-up to our 1986 Jubilee celebrations to a resident and local government councillor on the island. I quote the Premier's ignorance of the facts, but he should not be able to plead ignorance of them any longer. The Premier stated:

> Kangaroo Island was the place of first non-native settlement in what was later to become the colony of South Australia.

That statement provides an interesting contrast with the plaque that was unveiled referring to the newly established colony of South Australia. Was he referring to pre-July 1836 settlement? I think not. He erroneously went on:

> There can be no doubt that Glenelg is properly described as the birthplace and that 28 December 1836 was the birthday of South Australia, which simply did not exist as a colony with formal government before Governor Hindmarsh made his first proclamation that day.

If the Premier meant that it had not existed as a colony before that date, he was wrong. If he meant—and I hope he did—it did not exist as a colony with formal government as the qualifier, then there is some argument for that. However, if that is the basis upon which Kangaroo Island has not been recognised as the birthplace of South Australia, it is a fallacious argument.

It is a matter of historical fact, detail of which I discussed earlier and which should have been known by the Premier at that time, that the colony of South Australia was in existence some two years before the South Australia Company settlers arrived at Kangaroo Island on 27 July 1836, and certainly before the Govenor presented his credentials at Holdfast Bay on 28 December.

Lamentably, the Premier concluded his letter to the Kingscote councillor by saying:

> Your concern is understood—

a sorry solace—

> but I believe we must strive to better inform South Australians about our early history rather than encourage any kind of unproductive rivalry between Glenelg and Kangaroo Island.

I suggest to honourable members that the Premier is not grasping the opportunity—for certainly he had not then and he has not up to date—to put the record straight, and that only contributed to the potential for rivalry—a notion that has never been the case between these two communities. In fact, I must pay tribute to the people who have been principally involved in this debate, the Mayors of Kingscote and Glenelg—Ms Janice Kelly and Mr Brian Nadillo—the Kangaroo Island community and the officers of the Kangaroo Island Pioneers Association. Debate and dialogue has been most cordial and amicable, which augurs well for a sensible resolution of the matter once and for all.

In contrast to the Premier's unfortunate choice of words, I draw attention to an excellent book published by the State Heritage Branch of the Department of Environment and Planning to mark the State's Jubilee in 1986. I quote several interesting extracts from chapter 6 of *South Australian Heritage*:

> . . . During the 34 years between the first sighting and official settlement, Kangaroo Island was better known and more frequently visited than the adjoining mainland, and it figured prominently in plans for the formal British colonisation of South Australia . . . The earliest contacts by Europeans were made by sea well before official settlement . . . Captain Sutherland, who claimed to have visited Kangaroo Island in 1819 was optimistic (and inaccurate) that it later led to the first formal colonisation in the island in 1836 . . . In 1834, the South Australian Act founding the colony was passed by the British Parliament. The South Australia Company was formed in 1835 which helped the Colony on its feet financially. . . The colony's first school—

and I emphasise that—

was held under a bush at Reeves Point: its first burials were made in the existing cemetery.

It is unfortunate that the same author in chapter 7, describing two earlier mainland settlements (Mitcham and Glenelg), falters in historical accuracy by writing:

Holdfast Bay was the first official landing place in 1836.

Nevertheless, this fine book, described as a 'most significant contribution to South Australia's Jubilee 150 celebrations', carried the imprimatur of the Hon. D.J. Hopgood, Deputy Premier and some time Minister for Environment and Planning. It is good to note that the honourable gentleman in his preface endorsed the truth about Kangaroo Island's pre-eminence in South Australia's history by saying amongst other things:

The analyses of places events and activities presented by the contributions to this book will help us all better to understand and appreciate the significance of the history which surrounds us in our daily lives.

Whilst on the subject of properly informing South Australians on history surrounding the first European settlement of our State, it is important to give priority to ensuring that our children, and we, are educated with the truth. To this end the Kangaroo Island Pioneers Association last year successfully obtained the support of the Minister of Education in ensuring that this occurs in relation to Kangaroo Island. Apart from the long-standing concern about the need to recognise Kangaroo Island's rightful place in our early European history, the catalyst for an approach to the Minister was the publication of the book *This Southern Land* by Jean Nunn, published in 1989. She is the person who I was not supposed to acknowledge was in the gallery. Mrs Nunn, a teacher, accredited historian and author, and her husband, Ron, settled and farmed on the island after the war under the War Service Land Settlement Scheme of 1948-66. The book, a definitive history of Kangaroo Island, sets out clearly the events surrounding the colonial beginnings of South Australia on Kangaroo Island.

The Education Department, on behalf of the Minister, responded in a very positive way, and I quote part of the encouraging reply:

Your important information may be missed by some students and teachers so we will include the details in the next issue of the *Rapport* newsletter, which covers history news. The excellent reference book *This Southern Land* will also be mentioned as a source for the history of the beginnings of South Australia on Kangaroo Island. Your reference material would be most useful to the course writers who are compiling references on South Australia.

The association followed through and the dates were duly included in course writers data lists. It is known also that Catholic education authorities have distributed details of the book to schools for use in curricula development—very enlightened. A copy of *This Southern Land* is held in the parliamentary library, and I commend it as essential reading to honourable members. Here it is with the appropriate page marked.

If precedent is needed, we have only to refer to the first settlements in Victoria and Western Australia. The birthplace of Victoria is Portland, and I have here a tourist brochure which has on its cover, 'Portland—Victoria's birthplace'. There is no hassle about that. There is no contest with people competing with Portland as the acknowledged birthplace of Victoria. It is the same with Fremantle in Western Australia. In both cases there has been no usurpation of birthright by capital cities or other centres, and Portland and Fremantle annually celebrate their important places in State and national history.

I urge that three things be done:

1. That Parliament sets the record straight for present and future generations by an approach to the Governor, Her Excellency Dame Roma Mitchell, to have a formal vice-regal announcement and recognition of Reeves Point Kangaroo Island as South Australia's birthplace.

2. That Parliament recognises Glenelg's part in the State's history by declaring it to be the place of inauguration of the Government of South Australia.

3. That the Minister for Local Government Relations ask the city of Glenelg to remove all reference to birthplace of South Australia from letterhead, signs, media publicity and its annual ceremony on 26 December.

In fact, I would not be surprised if the city of Glenelg took that initiative itself. It has shown a certain amount of openness to accepting the argument that I have been putting forward in this Chamber today.

Finally, let me give the Council two poignant yet salutary quotations. The first is an extract from the log of Captain Morgan, captain of the barque *Duke of York*. As the *Duke of York* set sail from Nepean Bay for Hobart, Captain Morgan sent the following message to the settlers:

May you live in peace. We made sail from the infant settlement praying this barren land may become a fruitful field in God's vineyeard.

Was he writing about a non-existent colony? I also quote an excerpt from *Where Our History Began* by Ernest Hill (South Australian Archives):

The most hallowed memories of the island belong to the little settlement of Kingscote, the first landing place of the pioneers who came in eight ships before the *Buffalo* and set up their humble homes in the bush, patiently waiting for leadership . . . Theirs was the ultimate triumph of the nation builders, theirs is the reward we reap today. The mulberry tree, the last stones of the old-time dwellings and the little graveyard in the gully tell a story that will never be forgotten. South Australia is not nearly as proud of Kangaroo Island as it should be. The time will come when its glories and its romantic history will be known to the world.

That early settlement, the beginning of the colony of South Australia on Kangaroo Island, continued through unbroken. Many of the families that landed on Kangaroo Island before the landing of Hindmarsh at Glenelg remained and their antecedants are still there on Kangaroo Island. Now is the time to recognise that Kangaroo Island is the appropriate birthplace for the colony of South Australia. I urge honourable members to support the motion.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): In speaking to this motion, I wish to move an amendment, namely, to replace the wording used by the Hon. Mr Gilfillan with the following:

That this Council officially recognises:

(a) human occupation of South Australia for many thousands of years;

(b) European habitation in South Australia from early in the nineteenth century;

(c) a settlement of individuals from the South Australian Company on Kangaroo Island from July 1836; and

(d) a proclamation which established a Government of South Australia at Glenelg on 28 December 1836.

My reasons for moving the amendment are not to dispute many of the facts that the Hon. Mr Gilfillan has provided, but a motion passed by this Council should be accurate, factual and non emotional. The use of the word 'birthplace' is unfortunate. As my ironic remarks indicated previously when the subject was raised in Question Time by the Hon. Mr Gilfillan, if we are to use reproductive analogies such as 'birthplace', one can ask when was conception, implantation, quickening, the onset of labour, birth, christening and so on. We do not need to use words like 'birthplace'.

The Hon. I. Gilfillan: Why did Glenelg use it?

The Hon. ANNE LEVY: I am not standing here on behalf of Glenelg or justifying Glenelg—I am trying to present a constructive contribution to this debate. I certainly support this Chamber's passing a motion that officially recognises

historical fact, but it should do so in unemotional terms, which do not use reproductive analogies that are quite inappropriate and can lead to raised passions on the part of many people.

In the first place (as will be obvious in paragraph *(a)* of my amendment), 'birthplace' seems to completely ignore the many years of Aboriginal occupation of South Australia. It implies that this was a *terra nullus*, that there was no human occupation here before Europeans arrived at whatever date they may have arrived in the nineteenth century.

The Hon. I. Gilfillan: I don't mind acknowledging that Aboriginal—

The Hon. ANNE LEVY: I object to these interjections. I did not interject when the Hon. Mr Gilfillan was speaking. The honourable member's motion talks about Kangaroo Island as the birthplace of South Australia. He does not say anything about the colony of South Australia, the State of South Australia or any Government structure. It can be read as implying that there was no human occupation in the area of this continent, now known as South Australia, before Europeans came here. This is grossly insulting to Aboriginal people. Therefore, paragraph *(a)* of my amendment refers to human occupation of South Australia for many thousands of years. I am sure that no-one here would seriously dispute that fact.

With regard to Aboriginal occupation in South Australia, I am indebted to various social anthropologists who have indicated to me that currently Aboriginal artefacts are found in the Nullarbor part of this State dating back 20 000 years. In western New South Wales there is indication of Aboriginal occupation dating back 40 000 years. In Kakadu in the Northern Territory there have been indications of Aboriginal occupation dating back 60 000 years. If we are considering the southern richer and more fertile areas of South Australia, we have no clear evidence of how far back Aboriginal occupation dates, but it is presumed to be about 30 000 years on the basis that it was 40 000 years in western New South Wales and 20 000 years on the Nullarbor. The areas we are discussing are about half way between, so one might expect Aboriginal occupation to date back at least 30 000 years.

The Hon. Peter Dunn: It's guesswork.

The Hon. ANNE LEVY: It is guesswork, certainly. In these less arid, more humid and more fertile areas, the type of artefacts that survive on the Nullarbor do not survive here and could not be expected to survive for that length of time. Again it is hard to estimate the number of Aboriginal people who lived in South Australia, but the experts hazard a guess that the Lower Murray group of Aborigines who extended through to Kangaroo Island and up the Murray as far as the current day township of Mannum would probably have been of the order of 4 000 to 5 000 people. Similarly, there would have been 4 000 to 5 000 people in the tribal group on the Adelaide Plains. So, in the areas we are considering it is a fair guess that in 1836, 1834 or 1819 there certainly would have been about 10 000 Aboriginal people living in the area.

The wording of the Hon. Mr Gilfillan's motion suggests that these 10 000 people were not present, and there is no recognition of the fact that they had been here for 30 000 years. I am not suggesting that the Hon. Mr Gilfillan intended his motion to reflect on Aboriginal occupation of the area that we call South Australia, but my amendment corrects any deficiency that his motion may have and gives due recognition to the long history of quite large Aboriginal populations in the area.

The Hon. I. Gilfillan: But they weren't on Kangaroo Island.

The Hon. ANNE LEVY: There were no Aboriginal people on Kangaroo Island in 1836, but they had been there previously. There were certainly Aboriginal populations on Kangaroo Island well before the nineteenth century but they were no longer there. Whether they died out or left because they did not like it or for whatever other reason, we cannot say. It is therefore not desirable to use emotive words. That there were no Aboriginal people is a statement of fact, without making any valid judgments as to why there were no Aborigines on Kangaroo Island in 1836.

I have included paragraph *(b)* in my amendment to recognise the European occupation, which certainly occurred from about 1806 on. This occurred largely on Kangaroo Island where, the Hon. Mr Gilfillan has said, there were whalers, sealers, escaped convicts and ship's deserters—on the whole a bunch of fairly lawless men. Initially, these individuals stayed for a certain time, then left. Some of them settled there from the 1820s. As the Hon. Mr Gilfillan indicated, they set up families. He said they married, but I am not sure who married them. From my readings, I understand those settlers kidnapped Aboriginal women from Tasmania and from the Fleurieu Peninsula and took them to Kangaroo Island. They certainly established a family life with them and lived there for many years.

The book *Heritage of Kangaroo Island* was published by the South Australian Department of Environment and Planning in 1991; in other words, it has just been finished and made available. A great deal of very interesting material is contained in this publication. With regard to these early visitors and, later, settlers, it is interesting to read that in 1804 the British Government sent a surveyor to Kangaroo Island as a possible site for colonisation. The book states:

> The Grimes Report was so unfavourable (in fact, it seems doubtful he even visited the island), condemning its poor timber and soils and the lack of fresh water, that colonisation of this entire southern Australian country was set back another 32 years. Ironically, another report by a Captain Sutherland [mentioned by the Hon. Mr Gilfillan] who claimed to have visited Kangaroo Island in 1819, was so optimistic (and inaccurate) that it led to the first formal colonisation of the island, with the establishment of the South Australia Company's settlement of Kingscote in 1836.

Further, the book states:

> In the meantime from about 1806 Kangaroo Island's very remoteness attracted settlers of a different kind, semi-lawless men who were escaped convicts, ship's deserters and sealers. They brought with them Tasmanian Aboriginal women and abducted other women from the Murray Mouth-Encounter Bay tribes. Some of the men were notorious for their crimes and cruelties, and one visitor described Kangaroo Island at that time as the most vicious place in the British Empire. If so, it was but a foretaste of the carelessness, cruelties and conflicts which attended contact between other British ruffians and Aboriginals at the frontiers of settlement throughout Australia.
>
> The Aboriginal women and children on Kangaroo Island, besides providing companionship, went trapping and gathering and kept the men both comfortably fed and able to trade skins and salt for rum and tobacco with the occasional ship. In 1827 a ship was sent from Sydney to round up the worst offenders, and the remainder settled more quietly under the self-styled 'governorship' [of Robert Wallen] at Three Wells (Cygnet) River (misnamed Henry Wallen at the Kingscote cemetery).

I recommend that book as being interesting material on the early people in Kangaroo Island, prior to any formal colonisation or settlement. While the men were given their names, the women, who were mainly Aboriginal, were named only by English Christian names such as, Sal, Bess, Emma, Puss, Polecat and other such terms, which were obviously given to them by these rather rough men. We do not know their real Aboriginal names.

The third part of the amendment deals with a settlement of individuals from the South Australia Company on Kan-

garoo Island from July 1836. I am quite happy to put 27 July 1836, if the Hon. Mr Gilfillan would like that. There is no doubt from all the history and from all the records that the first settlement as a settlement occurred on 27 July 1836. It was a private settlement. The ship, *Duke of York*, was there and other ships followed. The group was waiting for the Governor, waiting for a decision as to where the capital of the new colony would be. Colonel William Light arrived in November 1836, and dismissed Kangaroo Island quickly as the site for the new capital due to its lack of water and its poor soil.

After further examination around Gulf St Vincent and Spencer Gulf, Colonel Light chose the present site of Adelaide as the site for the capital. The South Australia Company, which was chaired by Angas, was very keen to set up its settlement. Further, the book states:

The South Australia Company was formed in 1835 with George Fife Angas as founder and chairman which helped set the colony on its feet financially, and continued its role in the new country in a typical nineteenth century blend of altruism and mercantilism. For there was money to be made in Australia in land speculation, financing, whaling and pastoralism. The New South Wales experience was proving that, and the new company tried it all. At that stage, whaling appeared to be most lucrative, having been to that time the major industry in New South Wales. So, its land purchases aside, the South Australia Company concentrated first on whaling. Its first goal was Kangaroo Island.

More efficient than the colonisation commissioners who were to establish the province, the South Australia Company more rapidly organised ships, workers and supplies. These left in February 1836, bound for Kangaroo Island.

There, the company proposed to form a permanent settlement and begin whaling. Other ships set sail about the same time. The *Rapid* carried the Surveyor-General, Colonel William Light, and his workers, who were to survey the new colonial lands and to make the crucial decision on the site of the capital city; and, later, the *Buffalo* with its complement of worthy colonists and officials, presided over by Captain John Hindmarsh, the new Governor.

The South Australia Company ships, *Lady Mary Pelham* and *Duke of York* made landfall at Kangaroo Island in July 1836 and later the *John Price*, heralding the beginning of formal settlement. The company's town—Kingscote, named after one of the directors—was established at Reeves Point, a site chosen because of its location in Nepean Bay and because it was near the entrance to the gulf, with access to the mainland. Kingscote was essentially a base for the company's whaling activities, but it was sited in the hope that it might also develop, if not as the capital city, at least as a port centrally located by the seaways to the mainland.

But soon after, Colonal Light landed at Nepean Bay. His verdict echoed that of the earlier official visitors, Nepean Bay was an impressive harbour but he rejected the site because of the poor soil and lack of water. From here Light explored the east coast of Gulf St Vincent where, after rejecting three other suggested sites along the mainland coast, he decided to place the capital city, Adelaide, on the banks of the Torrens River.

Light's decision immediately relegated Kingscote's status, at best, to that of an outlying provincial post, but even that role was bedevilled by the impoverished resources: even the water had to be at first carried by boat from waterholes at Point Marsden, across the bay. Without ceremony the company appropriated Governor Wallen's farm, but there was little other productive land, nor was the whaling successful, although the company persisted in setting up whaling stations both on the island and on the mainland.

Even so, the colony's first settlement might have survived had it been a Government rather than a company town. Its difficulties were reinforced by dispute between the high-handed company managers and their employees. Initially, even emigrant ship called there and usually at least a few colonists stayed behind when the rest shifted to Holdfast Bay. The colony's first school was held under the bush at Reeves Point and its first burials were made in the cemetery which remains near the site of the original town. Stone for the first road construction, from Adelaide to Port Adelaide, was shipped from quarries at the same place by company ships, and salt was mined and also shipped to Adelaide.

By 1838 Kingscote had a population of approximately 400, who lived in brush or timber huts and tents fringing the shore and brick and stone cottages, the more prominent company residences on the slopes of the hill behind Reeves Point. There was a store, a boarding house, workshops and a post office. However, later in that year the company cut its losses, moving its headquarters to Adelaide and with them went the majority of the inhabitants. Kingscote effectively ceased to exist and the progress of colonisation of the island virtually came to a halt. Its population was only 170 by 1860, less than half that of Kingscote before closure. By 1901 the population had risen to only 700.

I will not read any more of this fascinating document, which I commend to all members. The third part of my amendment clearly recognises a settlement of individuals from the South Australia Company on Kangaroo Island from 27 July 1836. The last part of my amendment refers to a proclamation which established a Government of South Australia at Glenelg on 28 December 1836, and the Hon. Mr Gilfillan obviously agrees with that statement as it echoes the second part of his motion. The proclamation on 28 December established Government for the colonists and, as has often been said, it called upon them to prove themselves worthy to be founders of a great and free colony, and stated the rights of the native population to the same protection under the law as other subjects of the King.

The Hon. Mr Gilfillan suggested that the proclamation at Glenelg was extremely important to Governor Hindmarsh for his own reasons. I suggest that it was regarded as very important by many of the colonists because the celebration of Proclamation Day began within 20 years of proclamation and the annual commemoration ceremony at Glenelg has continued until this day. I suggest that there was no confusion in their minds: they called it Proclamation Day to commemorate the proclamation that was read by Governor Hindmarsh. They certainly never used a word like 'birthplace' or pretended that there were no settlers on Kangaroo Island before the establishment of Adelaide. To this day we call it Proclamation Day, which is an accurate description.

I commend my amendment to members as being an accurate picture of human habitation in this part of the world, as not derogating from the long Aboriginal inhabitation here, but rather recognising the people who lived here prior to the establishment of the colony, recognising the settlement that occurred at Reeves Point and recognising the proclamation that was made on 28 December.

The significance that people place on each stage of this history is a matter of opinion. This, of course, is true of most history. People read into past events the importance that they have to them and give those events the significance that they want to suit their own purposes, even if this is to the exclusion of other groups or is done deliberately as a way of denigrating other groups. I am certainly not suggesting that this is what the Hon. Mr Gilfillan is doing: far from it. However, I think that this is true of history. Conversation with anyone from the History Trust or with the State Historian will establish that matter rapidly.

The History Trust emphasises that cultural diversity is a good thing and stresses that history is always a matter of opinion. The heat that has been generated by the Hon. Mr Gilfillan's motion is, I think, a good illustration of that. I reiterate that my amendment is meant to unemotionally describe the facts as clearly as possible, to give recognition where it is due to the Aboriginal population and to the early random settlers (one might almost call them), to give recognition to the settlement at Kingscote in July 1836 and to the proclamation of Government in December 1836. If we pass this amendment we will be accurately recording, in an unemotional way, what pertains to South Australia's history.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

[*Sitting suspended from 6.2 to 7.45 p.m.*]

ROAD TRAFFIC (SAFETY HELMET EXEMPTION) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 961.)

The Hon. DIANA LAIDLAW: Before I sought leave to continue my remarks, I was speaking in support of the Bill. I have moved today to seek exemptions in respect of the compulsory wearing of bicycle helmets. For some five years I have campaigned within my Party and publicly for it to be compulsory for pedal cyclists to wear helmets. Indeed, it was largely at my insistence that the exemptions I moved today were not moved by the Liberal Party at the time the package was debated last February and March. Notwithstanding heavy lobbying for exemptions on the basis of age, and medical and physical condition, plus a knowledge of exemption provisions in similar legislation in both Victoria and New South Wales, I maintained at that time that if safety helmets were to be compulsory they should be compulsory for one and all.

Reflecting on the debates some months ago, it is clear that members opposite held exactly the same view for the Government's Bill contained no exemption clause. In fact, the Bill even removed existing exemptions for motorcycle riders where the speed of travel was 25 km/h or less and for passengers in sidecars. During the Committee stage of the Bill in both Houses, respective Ministers were emphatic that no exemptions would be granted. As late as 7 August, the Minister of Emergency Services claimed in the *Advertiser* 'that no cyclists were exempt from wearing helmets under the new legislation.'

A number of factors have caused me to change my earlier rigid view on the subject of exemptions. The first relates to an exemption granted by the Minister of Transport (Mr Blevins) in June to Australia Post officers who deliver mail by travelling on cycles. This exemption was granted by the Minister under section 163aa of the Road Traffic Act which provides:

(1) The Minister may, by instrument in writing or by notice published in the *Gazette*—

(a) exempt—

(i) any specified vehicle;

(ii) any vehicles of a specified class;

or

(iii) vehicles carrying loads of a specific kind,

from specified provisions of this Part;

The Minister granted the exemption to Australia Post officers by instrument in writing and without a public announcement in either the *Gazette* or by way of a media statement. I suspect he chose this path of secrecy and silence because he did not want other cyclists to learn of the precedent he had set. Certainly, it is not clear what exceptional circumstances Australia Post officers and their union were able to plead in order to be singled out by the Minister as the one and only class of persons in South Australia deserving of such special privileged exemption status.

Perhaps there is a simple explanation. It has been suggested to me that the Minister owed a favour, or wanted to ingratiate himself, to the Australian Postal and Telecommunications Union, the union which covers Australia Post officers. Certainly, the exemption could not have been granted on the basis that approved helmets do not have a sun visor. I am advised that sometime ago Australia Post itself commissioned such a helmet to be designed and that a safety helmet with a visor is now available for Australia Post officers, but they simply refuse to wear it. Also I note that an Australian company, The Mad Hatters Hat Factory Pty Ltd, manufactures bike helmet brims that fit over the safety helmet and shade both one's face and neck. These brims are available locally at the Mad Hatters shop at 24 Gilbert Street in the city.

To give the Minister the benefit of the doubt about his motives in this matter, perhaps he granted the exemption to Australia Post officers because the union had already negotiated an exemption in Victoria. But if uniformity is the explanation for the exemption in this State, why did the Minister not extend his noble principle to include other persons or class of person who also enjoy exemption status in Victoria and for that matter in NSW and Queensland? I note that Western Australia is in the process of drafting a Bill on the 10-point road safety black spot package and has, as yet, not determined its attitude to this matter.

In Victoria, NSW and Queensland the provisions of the Act relating to the safety helmets for cyclists all include a specific clause providing for exemptions by regulation. In Victoria the regulations provide the following exemption:

For a person who is a practising member of an organised religion who is wearing a headdress customarily worn by members of that religion and that headdress makes it impractical for the person to wear a bicycle helmet, and for a person who has a physical condition or a characteristic that makes it impractical for the person to wear a bicycle helmet.

Initially, these exemptions were to expire on 1 July 1991 but they have now been extended by VicRoads for a further year. In NSW the same exemptions apply with medical reasons being a further ground for obtaining an exemption. In NSW, no expiry date has been set for the extension of the exemptions; they are open-ended and unconditional. In Queensland, there is a regulation exempting people on the grounds of physical characteristic.

In South Australia, as I noted earlier, section 162 of the Road Traffic Act, which addresses safety helmets, includes no specific clause relating to the granting of exemptions by regulation. However section 163aa provides a general power of exemption. It is this section that the Minister used to exempt Australia Post officers. Subsequently, however, he has refused to extend this precedent to act on other legitimate claims for exemptions under this section. For this reason, I move today to place in the Act classes or person or personal circumstances that the Liberal Party believes need to be addressed in terms of exemption from the compulsory wearing of safety helmets.

First, I refer to Sikhs. In response to a question from the member for Chaffey (Hon. Peter Arnold) in the other place, in whose electorate many members of the Sikh community reside, on 27 August, the Minister (Mr Blevins) stated:

The Government is looking at the possibility of an exemption similar to that in Victoria where an exemption applies until June next year. A Victorian manufacturer is producing a helmet for Sikhs, which is why the Victorian legislation has a sunset clause. I am currently looking at the provisions.

This response is unacceptable to the Sikh community in South Australia and to the Liberal Party. The Sikhs require a blanket exemption as in New South Wales not a conditional exemption as applies in Victoria until July 1992. For Sikhs the turban is an article of faith, a religious obligation to protect the head and hair, which their religion regards as the seat of human consciousness, and thus sacred. I refer to correspondence on this matter from Mr Chris Singh as follows:

There is no issue about head gear for Sikhs. We are simply not permitted to wear anything other than a turban. Our religion has very strict injunctions about the physical appearance of the Sikh. Wearing of the turban is an essential prerequisite for male members of our religion. Women, too, are permitted to choose this form of dress.

That point was made also by the Minister for the Arts and Cultural Heritage in answer to a question I asked on this same matter earlier this session. Mr Singh continues:

But both male and female are not permitted to wear any other head gear along with a turban. Therefore a specially designed helmet to fit over a turban is not an option for the Sikh.

So for Sikhs it is not just an issue of the availability of a specifically designed helmet or any unease about looking ridiculous by trying to fit a helmet over a turban or a turban over a helmet. Their objections are based on deep-seated religious beliefs. There are numerous precedents which I could cite in Australia and the United Kingdom, plus other Commonwealth and non-Commonwealth countries, where Sikhs are exempt from the wearing of a safety helmet on religious grounds.

The Hon. T. Crothers interjecting:

The Hon. DIANA LAIDLAW: As long as they meet standards. I am not sure whether the Hon. Mr Crothers fought in either of the two world wars, but, if he did, he may have noted that Sikh soldiers were exempted by the allied command from wearing combat helmets over their turban. I understand that even in the recent war in Iraq, Iran and Kuwait, any participating Sikh members of that force were exempted from the wearing of a helmet in combat. This policy continues to operate even today in Australia, so that a Sikh student in the Adelaide University Regiment of the Army Reserve is exempt from wearing any headgear other than a turban. As far as I can determine, among all the countries and States in the world that have legislated for compulsory bike helmets, Queensland and South Australia are the only ones that do not provide an exemption for Sikhs.

In South Australia I believe this situation must be remedied quickly and without qualification, so as to demonstrate that, as legislators and as a community, we respect the cultural and religious practices of the Sikh members of our society. Also, I seek to provide a specific exemption in the Act for people whom medical practitioners deem it would be unreasonable to require to wear a helmet on medical grounds or for reason of physical characteristic. Over recent months my colleagues and I have received a number of representations from older people in particular, and medical practitioners on their behalf, arguing that they should be granted an exemption on medical grounds or for reason of a physical disability. I do not intend to take up the time of the Council to outline the ailments and disabilities that have been presented to me as reasons why some individuals should not be required to wear a helmet, although I do highlight that the wearing of a hearing aid can make the wearing of a helmet most uncomfortable, causing chafing. However, I do stress that all representations on this matter have come from people who have ridden a bicycle for years but are now forced to give up or to defy the law because of the discomfort they experience wearing a helmet due to a medical or physical condition.

I note in the recent electoral newsletter circulated by the member of Albert Park that he, too, has received a number of representations from constituents seeking an exemption on medical grounds. According to the newsletter, the member has written to the Minister of Transport requesting that an appeal provision be incorporated in the Act. Today I seek to oblige the member for Albert Park by moving to ensure that the Act provides the exemptions which he seeks on behalf of his constituents.

I suggest that not a huge number of people would be granted exemption on the basis of medical or physical condition. However, their plight can and should be accommodated by providing exemption provisions in the Act, with medical practitioners being entrusted to certify whether or not a person should be exempt from wearing a helmet due to a medical or physical condition.

Certainly, medical practitioners were entrusted last week with even greater road safety responsibilities when the Minister of Health and Minister for the Aged, Dr Hopgood, announced that persons over 75 years are no longer to be required to undertake a compulsory driving test. From 1 October medical practitioners in this State are to have full responsibility for determining whether or not a person above 75 years is fit, able and sufficiently responsible to drive a motor car. If we can entrust that road safety responsibility to medical practitioners, I believe we can easily entrust to them the responsibility for determining whether a person, on the basis of medical or physical condition, should be exempted from wearing a bicycle helmet.

Before concluding, Mr President, I wish to make a number of observations in relation to the wearing of helmets by passengers in sidecars—a vehicle attached to a motor cycle. Prior to June this year sidecar passengers were exempt from wearing a safety helmet. When the safety helmet legislation was introduced in the other place late last year I recall forwarding the Bill to the Motorcycle Riders Association for comment, but at that time I received no feedback. Since the passage of the Bill I have received many representations in writing and in person from the Motorcycle Riders Association and the Sidecar Riders Association about their objections to provisions in the amended Act.

I maintain that the Sidecar Riders Association has a valid case for seeking an exemption for sidecar passengers from the compulsory wearing of safety helmets, and that the Minister has the means to provide for such an exemption under section 163aa of the Act, as he did in June for Australia Post officers. Unlike the specific exemptions which I seek to have incorporated in section 162c of the Act, the exemption provisions in section 163aa relate to specified vehicle or vehicles of a specified class or vehicles carrying loads of a specified kind. It is most appropriate that the concerns related to me by the Sidecar Riders Association be addressed under this section of the Act.

The association argues that the wearing of helmets by sidecar passengers cannot be justified on safety grounds as the sidecar is a vehicle with one of the best safety records in this country and internationally. Indeed, world-wide sidecars generally attract a substantially lower insurance premium because of their good safety record. Also, because sidecars are defined as an open topped motorised vehicle along with motorised wheelchairs and convertible cars, it is asked why sidecars should be the only one of those three classes of vehicle to be singled out as requiring passengers to wear a helmet.

Finally, I alert members to the fact that sidecars are generally fitted to a motor cycle to allow motor cyclists to travel with their young family—and there are no appropriate approved motor cycle helmets available in children's sizes and, even if there were, their necks would not be strong enough to support such a helmet.

The Hon. R.J. Ritson: It is not a major cause of death with sidecars because they are pretty rare these days.

The Hon. DIANA LAIDLAW: They are not only rare, as the Hon. Dr Ritson has indicated, but they also have an extremely good safety record on the road. That is the case not only in this State, but internationally.

In conclusion, the Minister's selective move in June to exempt Australia Post officers from the compulsory wearing of helmets, plus representations since the Parliament last debated the bike helmet issue from members of the Sikh community in South Australia and from the medical profession, prompts me on behalf of the Liberal Party to introduce the Bill this evening. I believe the exemptions outlined are fair and reasonable and should be supported by honourable

members. I can see no reason why Sikhs in South Australia and other persons with a medical condition or physical characteristic should not enjoy the same exemptions and privileges as Sikhs and persons with a similar medical condition or physical characteristic enjoy in the more populous States of Victoria and New South Wales. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 amends section 162c to provide for a number of exemptions from the compulsory wearing of safety helmets by riders of cycles, both motor cycles and pedal cycles. The exemptions relate—

(a) to a person who is in possession of a current certificate signed by a medical practitioner identifying that, for medical reasons or because of physical characteristics, it would be unreasonable to require the person to wear a safety helmet; and

(b) to a person who, due to religious affiliation or membership of a cultural group, is wearing a head dress which makes it impractical for that person to wear a safety helmet.

The Hon. T CROTHERS secured the adjournment of the debate.

CORPORAL PUNISHMENT

The Hon. R.I. LUCAS (Leader of the Opposition): I move:

That regulations made under the Education Act 1972 concerning corporal punishment made on 30 May 1991 and laid on the table of this Council on 8 August 1991 be disallowed.

The subject of corporal punishment is a controversial one and there are strongly held views in the community both for and against. In the education community there are strongly held views for and against, and I would presume that those conflicting views would be reflected in the Parliament. Whilst the policy of the Labor Party is for the abolition of corporal punishment, one or two members of the parliamentary Labor Caucus in a quiet moment are prepared to indicate that they are not strongly supportive of their own Party's policy and, equally, there are members in the Liberal Party who, if they had their preferences, might not support the long held policy of the Liberal Party to make allowance for the use of corporal punishment in schools under certain strict conditions in South Australia. It is a controversial issue and there are strongly held views on both sides of the debate.

I for one and, I am sure, other members respect the views of individual members in relation to the issue of corporal punishment. The regulation on which this debate centred is regulation 123 (3) under the Education Act which states, in part:

The principal or head teacher or any teacher to whom either may delegate such authority may impose corporal punishment. The said detention and the imposition of corporal punishment shall be governed by such conditions as the Minister may determine.

That regulation is to be replaced by a new one which, in effect, refers only to detention as a form of punishment under that provision of the regulations under the Education Act. I say at the outset of this debate that this attempt by the Government to delete or amend this regulation will have, under this Government, no practical effect, irrespective of what happens in this debate, because the Government has proceeded over the past five years to prevent, under some administrative instruction, the use of corporal punishment in Government schools in South Australia, even though the regulations under the Education Act make allowance for corporal punishment.

Perhaps the Government is seeking some tidying up of the regulations here. I cannot see what other purpose it believes is being served by the change or amendment to the regulations under the Act. Irrespective of what happens in relation to this debate, under the current Government corporal punishment by way of administrative instruction would still be banned in Government schools.

The background to the debate this evening goes back to 1986, when the Hon. Anne Levy, in a motion at the ALP convention, sought to put into Labor policy the abolition of corporal punishment. The Hon. Anne Levy, with the support of the Hon. Greg Crafter, was successful in ensuring that the ALP convention supported that policy initiative. Soon after that (within 12 months) in 1987 the Bannon Government announced that over a five-year period until 1991 the Government would phase out the use of corporal punishment in Government schools and replace it with a new behaviour management program. From 1991 corporal punishment was to be banned in Government schools. Indeed, as we debate this motion here this evening corporal punishment is unable to be used in Government schools in South Australia.

The Government announced some 12 months ago its intention to introduce legislation to ban the use of corporal punishment in non-government schools in South Australia. The Minister is strangely quiet on that issue now, and I understand that he is not prepared to introduce the legislation for fear of its being the first piece of legislation to be defeated on the floor of the Assembly because of the attitude of the Independent Labor members in another place, whose views on discipline, or the lack of it, in Education Department schools and the need for change are not similar to those of the Minister of Education and the Bannon Government. We certainly will not be seeing that legislation which, it was publicly announced, was to be introduced into another place. I am sure that it is something about which the Hon. Anne Levy is somewhat concerned, as Government policy is being held to ransom by the Independent members of another place.

The Government's stated position since 1986 or 1987 has been clear. Equally, the Liberal Party position is different but also clear. The Liberal Party's position, as endorsed by the joint parliamentary Party and as the policy of the State Council, is that the reasonable use of corporal punishment ought to be retained as an option in the overall discipline package available for use in Government schools in South Australia. The Liberal Party has always accepted the view that it ought to be a subject of choice for local school communities—for parents and for staff in schools—as to what the appropriate discipline package ought to be for their schools and their children, and that we should not inflict upon them our own prejudices or biases as being for or against corporal punishment. It is not correct to say that the Liberal Party view is that all schools would be forced to include corporal punishment as part of the overall discipline package.

From a personal perspective, I say advisedly that we support the reasonable use of corporal punishment in Government schools. Speaking from personal experience, I know that in past years and in some schools corporal punishment

has been used unreasonably, and I certainly would not highlight any school. I know of one *Advertiser* journalist who said the article he wrote on the use of corporal punishment in his school (and he was a political journalist) caused the most flak for him in his whole journalistic career. The old parents, friends and teachers of that school descended *en masse* on that journalist saying, 'How dare you sully the reputation of teachers of this school.'

That is the Liberal Party position. It is clear and it has been a consistent position that we have maintained for some time. The essential part of the Liberal Party position is choice and decision-making by parents and local school communities. I note with interest the Bannon Government's policy on parent participation in schools. Only recently the Education Department's submission on the GARG review was released and the Director-General and the Minister waxed eloquent about the Bannon Government commitment to allowing parent participation and decision-making in schools and how important it was that parents be involved and should have some say in the critical decisions of schools.

The Bannon Government's parent participation policy, called 'Parents in Schools', which was released in the past 12 months or so, and signed by Ken Boston and the Hon. Greg Crafter states:

> This policy puts an onus on schools to reach out to their parents to encourage involvement or participation in decision-making affecting the education of their children while observing the rights of parents to choose the type and level of their commitment . . .
>
> Therefore a strong partnership between parents and school becomes all the more important when the complex and rapidly changing nature of our society is considered.
>
> To help students' personal, social and academic performance is just one of many good reasons why the Education Department wants parent participation in schools.
>
> The Education Department also encourages participation because:
>
> - parents have a unique knowledge and understanding of their own children, being their first and most influential educators;
> - parents have the right, through their responsibility to and for their children, to be informed about their children's learning and to participate in reaching decisions which affect them;
> - parents have talents, interests, energies and skills which enrich the life and program of the school.

The key part there is: 'The parents have the right to participate in reaching decisions which affect their children and their learning.' Further on, the policy states:

> The Education Department is committed both to increasing parents' involvement and to ensuring that parents can participate in school decision-making if they wish to do so. The nature and level of each parent's involvement and participation remains a matter of individual choice.

That is the stated policy of the Bannon Government, the Minister of Education and the Director-General of Education. At the same time, all the research shows us, and all our own knowledge tells us, that one of the most critical issues in education in schools today, other than the level of standards being achieved, is the level of discipline that exists within our schools. They are the two major concerns of the majority of parents in South Australia at the moment.

Back in 1984-85, the then Minister of Education, the Hon. Lynn Arnold, conducted a survey of parents and all those involved in schools as to their attitude to the retention of corporal punishment in schools. I guess it is one of those decisions you sometimes rue later; it is a bit like the old adage, 'You never appoint a committee unless you know what the decision will be.' Poor old Lynn Arnold conducted this survey, perhaps thinking that it might prompt a particular result. The Government and the Education Department were flooded with responses of parents, teachers and groups involved in education in Government schooling in South Australia.

The Hon. T.G. Roberts: The lights were burning late on Greenhill Road.

The Hon. R.I. LUCAS: No, this was one of those genuine, random surveys conducted by the Government, something with which we had nothing to do. I did not even know that the Minister was doing it at the time, back in 1984. Seventy per cent of those people—parents, those involved in the real world of what goes on in schools—said to the Government, unequivocally: 'We want corporal punishment to remain in our schools.' The inference of that (in 1984-85) was, 'We are concerned with the problems of discipline that exist in our Government schools in South Australia.' Poor old Lynn Arnold conducted a survey, hoping to get a result. Suddenly, his whole world was turned upside down and he had a survey that said that 70 per cent of the people did not want to head in the direction of the Hon. Anne Levy and others. What does one do?

The Hon. G. Weatherill: What about the responsibilities of parents?

The PRESIDENT: Order! The Hon. Mr Lucas.

The Hon. R.I. LUCAS: The Hon. George Weatherill says—

The PRESIDENT: Order! The Council will come to order. The Hon. Mr Lucas will address the Chair.

The Hon. R.I. LUCAS: I am, Mr President. The Hon. George Weatherill raises an important point by way of his out of order interjection: what about the parents? Indeed, that is the point that I am making. The Liberal Party is seeking to support the wishes of parents—

An honourable member: The responsibility of the parents.

The Hon. R.I. LUCAS: We will talk about responsibilities in a minute. We are seeking to support the wishes of parents by allowing the retention of corporal punishment for those parents, teachers and school communities that want to retain corporal punishment as part of their overall discipline package. Let the decisions be taken by the local school communities. This Government and this Minister are hoist with their own petar when they wax eloquent about parent participation. On one of the two critical issues to parents they do their survey. The Hon. Lynn Arnold did this survey back in 1984. He suppressed the information. He sought to conceal the results, and refused to publish them. He refused requests to release that information to parent associations and principal associations, who said at the time: 'By the way, Minister, you conducted a survey. What were the results of that survey?' Things have their way of finding their own level. The results leaked out some years later. As I said, we had this 70 per cent for the retention of corporal punishment. Feelings were pretty strong back in 1986-87.

Back in 1986, when this decision was first mooted, the South Australian Primary Principals Association, in a very strongly worded letter to the Minister of Education, said:

> If you had done your homework, you would realise that this has already been done by your predecessor in 1984 [that is, conducting a survey of what parents want] and it would be ridiculous to ask schools to undertake the same exercise when the results of such a survey undertaken by Lynn Arnold demonstrated conclusively that a large majority of all respondents, whether they were individual parents, council members, principal organisations or private citizens wanted corporal punishment retained as part of the overall strategies open to schools in managing student behaviour.
>
> Your predecessor, Lynn Arnold, as Minister of Education, did not publish the results of the survey because it provided a different answer from what he wanted. So much for consultation! I now ask you publicly to release the results of that survey and demonstrate to the public the hypocrisy of the Australian Labor Party on this issue.

I will not read the rest of the letter for fear of inflaming debate this evening, but that was the attitude of the then South Australian Primary Principals Association in 1986.

I do not indicate that that is the attitude of all primary school principals now or the Primary Principals Association now. A good number of associations, like the Principals Association, after five years of being told by the Government that corporal punishment is to be abolished, have basically rolled over and accepted the Government's decision, irrespective of the individual views that some principals might hold.

I am not sure what the current position in 1990-91 of SAASSO is, but I quote the 1986 attitude of Mr Ian Wilson, who was then the President of the South Australian Association of State Schools Organisations SAASSO:

> The schools association president, Mr Ian Wilson, said schools should have the right to determine their policies about punishment.
>
> 'I believe that is the fundamental problem. irrespective of the merits or otherwise of corporal punishment,' he said.
>
> 'That is what we take strong exception to, and will mount a strong campaign to ensure that the demands of a political Party do not dictate what happens in our schools.' Mr Wilson also was critical that the association was not consulted on the matter.
>
> 'It is simply flying in the face of the Government and the Education Department's policy of parents participating in the decisions of schools,' he said.
>
> 'We intend to rigorously defend the rights of schools to determine whether they should have corporal punishment if a particular behaviour pattern demands that kind of response.'

One of the strongest opponents of the Government's decision was Mr Alec Talbot. I recall his saying on a number of occasions that he supported the retention of corporal punishment, but not because it was used often in all the schools in which he taught. In fact, I can remember his saying on one radio interview that he could think of only one or two occasions in his career on which corporal punishment had been used in the schools at which he had either been the principal of or had taught in. He said that it was an essential part of the overall discipline package of his schools. He said that, whilst it might not be used, it remained there as a potential punishment for some students. As he said, it worked for a good number of his students, just by being there as part of his school's overall discipline package.

In the real world where principals must run their schools and ensure appropriate levels of discipline in their classroom, support was given at the time from those principals who were prepared to speak out. In the current climate, we would never see articles such as the ones I will quote from, where South Australian leading educators were prepared to speak out about potential Government decisions. These days many principals are reluctant to speak out on Government policy. At the time, back in 1986 when this decision was first mooted, a number of articles were written. In the local *Messenger* newspaper of the north-eastern suburbs, there was an article titled 'Most principals support the cane'. There were interviews with four principals who indicated support for the retention of corporal punishment. The Strathmont High School Deputy Principal, Mr Peter Lammas, said:

> . . . caning was used only on rare occasions at the school. It is a last resort when all else fails. Quite a few parents request that we use corporal punishment, but we don't always follow that.

The article continues:

> President of the South Australian High Schools Principals Association and Gilles Plains High School Principal Geoff Thorpe said he wondered why Education Minister Greg Crafter was not considering parent's views. 'Parents generally want the option of corporal punishment retained in schools.'
>
> 'The Minister has named this year the Year of Parents and Students in schools, and yet he makes a statement that corporal punishment will disappear from schools within five years, against the wishes of parents.'

I could cite more examples to indicate that, out in the real world where the problems do exist, some principals—not all principals—if they are able to speak publicly, say they want to see the retention of corporal punishment.

Considerable discipline problems exist within our schools at the moment, and I will not take up too much time of the Council listing those. I shall indicate some of the discipline problems that exist currently in our northern suburbs schools. Many suburban schools, both primary and secondary, are facing a long wait in obtaining Education Department help for disruptive students. The bold new world was to be that, when corporal punishment was phased out, schools—and teachers in particular in the classroom—would be provided with extra assistance by the department to ensure the maintenance of an appropriate level of discipline within classrooms and schools.

We are told that more than 200 children are currently on the waiting list to attend the Northern Learning Centre, which provides counselling and remedial work for disruptive students in the northern suburbs. Those centre's two facilities can accept only up to 10 students at any one time. We are told that in some cases students who are becoming a major problem in schools will never be able to attend at that centre.

Without going into all the gory detail, the simple fact is that teachers in many of those schools in the northern suburbs, in the southern suburbs and in many other schools in South Australia are at their wits end. Those teachers are trying to maintain a level of discipline. They have a small number of disruptive, undisciplined students in their classroom. They have gone through all the warning mechanisms under this new behaviour management system that the department has introduced, and they have come to the end of the road. At the end of the road there is no punishment any more, and what was supposed to exist, that is, time out or relief through centres such as the Northern Learning Centre are now so overburdened with work and the waiting lists are so long that schools and the teachers are having to retain those disruptive students in their classroom.

The bottom line is that it is not only the education of two or three disruptive students that we ought to be concerned about—and we ought to be—but also the 20 or 25 students in the classroom who want to get on with their education and with learning. They are having the quality of their education lessened and affected badly by the disruption of an unruly few. This Government is blithely going on, ignoring the pressures that are building in our system because of the failure of its behaviour management policies. It is clear that the Government's current policies are not working. Whilst we are not suggesting and never would suggest that corporal punishment is the panacea for discipline problems in our schools, we are suggesting that as part of toughening discipline in our Government schools, corporal punishment should retain a role and be there if parents and teachers choose it to be part of the discipline package.

The abolition of corporal punishment is leading to the use of many other techniques in schools by teachers and by people in charge. I refer to the increased use of verbal abuse, humiliation techniques, sarcasm and, perhaps, degrading comments—and I am not suggesting they are encouraged by the Education Department—as a natural outlet of teachers who, in frustration at the lack of support from the department, are inflicting these forms of treatment or behaviour management technique upon the unruly students in their classroom. Much writing and research has been done about the problems associated with corporal punishment. Again, we have discussed many of those in debates in recent years, and we may well hear more during this debate. I accept that a lot of research has been done about

the psychological and other problems associated with corporal punishment.

Equally, a lot of international research has been done now on the problems of verbal abuse and emotional maltreatment of children. I refer to a paper written by James and Anne Garbarino entitled, 'Emotional Maltreatment of Children' which I picked up when I was in America three or four years ago from the National Committee for the Prevention of Child Abuse. The paper states:

> Mr Dorn has a reputation at the middle school where he teaches of being able to make anyone, even the toughest boy, cry in front of the class. He tongue-lashes everyone. His subject for 25 years has been math, but even the few 'whizzes' who have come to his classes, confident of being immune from verbal abuse because of their ability, have been subjected to his sarcasm. Sheila and John, two of his best students, felt that they had a rapport with Mr Dorn, for he had been teaching them chess after school. When he humiliated them in their turn, they were especially hurt and puzzled.
>
> Case histories like these reveal that, as surely as one can break a child's bones, one can break a child's spirit. Society is coming to grips with the physical abuse and neglect of children, and that is a major accomplishment. But physical assault is not the only form of abuse; nor is nutritional starvation the only form of neglect. Emotional assault and psychological starvation are of equal, if not greater, importance as social problems... When children are victims of emotional maltreatment, they can have trouble with all these important aspects of personal growth and development. The likelihood of becoming victims and victimisers increases dramatically.

Page 4 states:

> Part of this movement has been the recognition that emotional damage is often the underlying problem in many, if not most, cases that first appear as other forms of abuse and neglect. Thus, in most cases of physical or sexual abuse, it is the emotional scars rather than the physical ones that must receive special attention. This is one reason why professional treatment of these cases as simply physical problems is so often ineffective and damaging to the child. Unless emotional maltreatment is considered an essential piece of the puzzle, efforts to protect and nurture children are incomplete at best and doomed to failure at worst.

This interesting paper provides a definition of 'emotional maltreatment' as follows:

> National Centre on Child Abuse and Neglect has published the *Interdisciplinary Glossary on Child Abuse and Neglect*, which offers the following definition:
>
> *Psychological/Emotional Abuse*—Child abuse which results in impaired psychological growth and development. Frequently occurs as verbal abuse or excessive demands on a child's performance and results in a negative self-image on the part of the child and disturbed child behaviour. May occur with or without physical abuse.

There are many other research articles and writings on the question of emotional maltreatment. It was a booming industry in the child abuse area in America some three to four years ago. Most of the centres I visited were moving from dealing with physical abuse to the area of emotional abuse, and huge posters in New York and Washington were being produced by associations in relation to the verbal abuse and emotional maltreatment of children.

A number of eminent people will argue against these sorts of writings in relation to the problems of the emotional maltreatment of children and will argue against the problems associated with corporal punishment. Again I acknowledge that there are strongly held views on both sides. However, the point I make is that it is simplistic to highlight and ban corporal punishment on the basis of the research writings and the generally held gut reactions of members of the South Australian Government.

Teachers are despairing that they are being left powerless in the classroom—powerless to handle unruly students and remove them from the classroom so that they can get on with educating the majority of their students. Teachers are despairing that every discipline control technique they have had in their back pocket over the past 20 or 30 years of teaching is steadily being removed from their armoury. If we look at the trends in this debate on corporal punishment and we see what is happening in the debate on emotional abuse, I suggest that very soon there will be major campaigns to highlight those teachers who subject their students to humiliation, sarcasm or any form of emotional abuse.

If one looks at that definition of 'emotional abuse' that the National Centre on Child Abuse and Neglect in America uses, one can see that, because corporal punishment is being removed, many of the behaviour management control techniques presently used by teachers will be targeted by the educators and the academics—those people who write a lot about what goes on in schools but never actually go into the classroom and experience in the real world the frustration and despair of the classroom teacher as they try to cope with 25 to 30 fourteen or fifteen year old boys and girls when three or four of them have no desire to learn and seek only to disrupt the education of the majority in the classroom.

The final point I wish to raise is where this debate is heading, and perhaps highlight what I see as the inconsistency of some people with respect to the corporal punishment debate. In this matter I do not highlight the Hon. Anne Levy, because I believe she is consistent in relation to her wish to see corporal punishment abolished in Government schools and non-government schools and to stop parents in the reasonable use of smacking or physical discipline over their children. Although I strongly disagree with her view, nevertheless I believe she is consistent in it.

In relation to where the debate is heading, I quote from an article by Sally McGregory distributed to all members by the Children's Interest Bureau in the last couple of years, as follows:

> In at least three Scandinavian countries, parents have already lost any legal right to use physical punishment. In Sweden the law states: the child may not be subjected to physical punishment or other injurious or humiliating treatment.

I guess that that refers to emotional maltreatment, which I have talked about. The article continues:

> In Finland, the Child Custody and Right to Access Act 1983 insists that a child 'shall not be subdued, corporally punished or otherwise humiliated'. And in Denmark, anyone having custody of a child must protect them against 'physical and psychological violence and other offensive treatment'. The Children's Legal Centre will be publishing a report and sponsoring a major conference on 'protecting children from parental physical punishment' during the coming year.

Some people are consistent, like the Hon. Anne Levy who would argue along the lines of the legislation in Sweden, Finland and Denmark. However, the attitude of many at present and, I guess, the attitude of the Bannon Government is that it would be political suicide to introduce legislation that provided that parents would not be entitled to reasonably smack their children as a form of physical punishment. I continue to use the word 'reasonably'. The law already adequately covers unreasonable use of physical force by parents in relation to the excessive use of punishment, and that would be designated as assault or child abuse. But the Bannon Government knows that it would be political suicide for it to go down that path. At the moment the attitudes of people similar to the Hon. Anne Levy, and others within the Labor Caucus perhaps, are obviously not in the majority.

Where is the consistency of the Minister of Education, the Bannon Government and all those who support Government policy when one looks at the doctrine of *in loco parentis*? As parents we send our children to schools, and the school teachers take the place of the parents: they are *in loco parentis*. They have responsibility as *de facto* parents whilst our children are in Government schools. The Gov-

ernment's attitude is that it is proper and acceptable that parents may use reasonable physical punishment in relation to their children if they wish. I acknowledge that increasing numbers of parents do not, but equally everyone must acknowledge that the vast majority of parents would want to retain the right to use reasonable physical punishment on their children if they make that decision.

So, that is the position in schools, yet when parents hand over their children to a school—teachers are *in loco parentis*—the Bannon Government says that reasonable physical punishment is not appropriate. In fact, the Minister of Education and the Hon. Anne Levy talk of the infringement of the rights of children and abuse of children, and they use quite inflammatory and provocative language in relation to physical punishment in schools. However, in the same breath the Minister of Education and the Bannon Government say that it is all right for parents to continue to use reasonable physical punishment on their children in the home. Where is the consistency of the argument of the Minister of Education and the Government?

The Hon. Anne Levy: It is a different relationship.

The Hon. R.I. LUCAS: There is no difference at all. If one wants to use provocative language such as 'the rights of children' and 'abuse of children' in relation to the use of corporal punishment, there is no difference at all—and the Hon. Anne Levy knows it. It is just that her views are in the minority within the Labor Caucus at the moment. I believe that if the Hon. Anne Levy had her way she would support the Swedish legislation and would want to see South Australian parents prevented from smacking their children, but that is not the majority view of the Labor Caucus or of the Bannon Government.

I make no criticism of the Hon. Anne Levy, for while I disagree strongly with her views she is, at least, consistent. However, I highlight the inconsistency of the views of the Bannon Government and all others who support this distinction between schools and parents. As I have said, this is a controversial area and the views of members in this Chamber are held very strongly. I reiterate the Liberal Party's position and indicate—

The Hon. Anne Levy: Not again! You have done it many times.

The Hon. R.I. LUCAS: The Minister says that she never interjects, but she seems to forget that she always does and then seeks the protection—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: If the Minister did not interject all the time we would be able to complete our remarks within the time frame that we have allotted.

The Hon. Anne Levy interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas.

The Hon. R.I. LUCAS: I repeat the views of the Liberal Party and urge members to disallow these regulations under the Education Act in relation to corporal punishment.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

SOUTH AUSTRALIAN BIRTHPLACE

Adjourned debate on motion of Hon. I. Gilfillan (resumed on motion).

(Continued from page 966.)

The Hon. M.S. FELEPPA: I rise to support the amendments moved by my colleague the Hon. Anne Levy. While from the outset I recognise the historic evidence of the important role that Kangaroo Island played in early settlement, the idea that there is some kind of a conflict between Kingscote on Kangaroo Island and Glenelg on the mainland claiming to be the birthplace of South Australia is something of a storm in a teacup.

I do not mean to deny Kingscote any claim to fame. Far from it: in my view, each town deserves recognition for what it was and for what it is today. From my humble research I have come to the conclusion that Kingscote deserves recognition for the part it played in the history of our State, but what was its history? The site of Kingscote was used by sealers and whalers as a watering place and as a source of wood and salt long before settlement. The safe harbor was a secure haven and a good resting place.

Harry Wallen had been farming on the island with his Aboriginal wives for some 20 years before the first immigrant ship arrived. He was a respected man familiar with the Bible and one who refused to grow barley because it could be malted and used for making alcohol. As has been pointed out, the ship, the *Duke of York*, arrived at Nepean Bay on 27 July 1836 with Samuel Stephens, who had been appointed by George Fife Angas to be the company's first manager in South Australia. The *Australian Encyclopaedia* says of that occasion:

> ... in July the first settlers for the new province of South Australia arrived there in the *Duke of York*. A mulberry tree, planted by Charles Powell, and a cairn behind Reeves Point, marked the site of the first settlement. Kingscote was the first confirmed town site in South Australia, and for several months there was talk of making it the capital.

There was good reason for the first ship and most of the other company ships to arrive first at Nepean Bay. Captain George Sutherland had spent most of 1819 on the island and gave it a good report, which influenced the decision to occupy the island. There was a further reason of safety.

In 1802, Flinders noted that there were no Aborigines on the island and that, landing first at Nepean Bay, the immigrants would be safe from attack. Aborigines on the mainland were far from friendly. Seamen had stolen their women. That is how Wallen got his three wives and others got theirs. The Aborigines, quite rightly in their opinion, resented and resisted the intrusion of settlers in their land. In 1830, Captain Sturt failed to find the mouth of the River Murray after being resisted all the way down the river by the Aborigines.

On orders from New South Wales, Captain Barker, who was the commandant at King George Sound, was ordered to explore the shore of the Gulf St Vincent to find the outlet of the River Murray. During his search on land he stripped and swam across a channel between hummocks of sand to ascertain his position with the aid of a compass. He was not seen again. Later it was learnt that he had been speared as he ran to the water and his body was carried away by the tide. This was the mood of the Aborigines, and if a small party of immigrants without proper protection had landed on the shores of the gulf, they, too, could well have been wiped out.

There was good reason for coming first to Nepean Bay where there was no threat of attack. However, the management of the settlement had its problems. Samuel Stephens was not the most suitable person to be the company's manager in South Australia. Many of the problems stemmed from Stephens' inability to obtain the cooperation of the men. Stephens was tactless, conceited, impetuous and given to drink, although he was the son of a Wesleyan minister. Not all the problems were caused by Stephens, but those he did not cause were aggravated by him. Jean Nunn, in her book *This Southern Land: Kangaroo Island*, says:

The settlers were slow to begin the process of adaption which was their only hope of survival and the men felt insecure in the remote situation and anxious about their pay.

Today we would say that all, including Stephens, suffered the culture shock. The older settlers, like Wallen, had come to terms with that problem years before. Because of these problems, not much had been accomplished by the new settlers, and there was continuing uncertainty about the location of the capital.

When Dr W.H. Leigh visited the island from 21 April to the end of August 1837, a year after Stephens had arrived, there was still only one solitary white cottage on Stephens' property and a skeleton of a storehouse on the beach.

Colonel Light, the Surveyor-General, arrived on 20 August 1836 and began looking for another site for the capital as Kingscote was lacking in wood, water and good soil. Sutherland's report overrated the potential of the island. The site chosen by Light for the capital was on the mainland on the banks of the River Torrens which discharged into Gulf St Vincent.

When the *Buffalo* arrived with Governor Hindmarsh, it did not call at Kingscote but went to Port Lincoln and then on to Holdfast Bay on the advice of Colonel Light. C.S. Compston says of the arrival of the *Buffalo* at Holdfast Bay:

When the Governor of South Australia arrived at Holdfast Bay in HMS *Buffalo*, on 28 December 1836, passengers from the eight vessels which had arrived during the year were there to welcome him. That afternoon the Governor took the oath of office and the new British province of South Australia came into being.

Under the gum trees of Glenelg the existence of South Australia was proclaimed. Over a few years following the proclamation, the South Australia Company gradually removed its operation from Kingscote, where it had first been, to the mainland, and the settlement was almost abandoned. That is the history of the beginnings of Kingscote.

If we try to express history in figures of speech like birth and death we find it acceptable in ordinary speech and in newspaper articles, but such figures of speech are quite unsuitable for official documents and more so for official recognition. We speak, for example, of the death of Nazism in 1945, but it is still kicking in Germany and elsewhere today. It was defeat, not death.

To speak officially of the birth of South Australia, we must distort the analogy to make it fit. If we choose to use a figure of birth to speak of the coming into being of South Australia, then it was conceived in England, gestated until the first settlers arrived at Kingscote where a breech birth commenced, and the full birthing did not occur, according to my reading, until the proclamation at Glenelg, where the umbilical cord was cut by the Order in Council dated 23 February 1836 empowering the Governor to make laws. So, leaving out the analogy to birth, Glenelg was the site of the proclamation of South Australia. That is what I have interpreted from my reading. That is a fact and that is all that needs to be said.

Finally, I agree with the Hon. Ian Gilfillan that Kingscote deserves some recognition. Again leaving out the analogy to birth, Kingscote was the site first settled by immigrants to South Australia, and it is the oldest site continually occupied since before the proclamation of the province of South Australia. That is also a fact. To say more than this by implication for a figure of speech is to distort the truth and confuse the issue. I support the amendment.

The Hon. R.J. RITSON secured the adjournment of the debate.

HILLCREST HOSPITAL

Adjourned debate on motion of Hon. M.J. Elliott:

That this Council—

1. Recognise a significant level of community concern in relation to the proposed closure of Hillcrest Hospital.
2. Further recognise that there are potential benefits from the redirection of resources to community-based services.
3. Call on the State Government to release a timeline and detailed information both structural and financial in relation to redirection of psychiatric resources.
4. Call for an undertaking from the State Government that no service at Hillcrest Hospital close until another service is in place which will properly cater for the displaced patients.

(Continued from 11 September. Page 720).

The Hon. R.J. RITSON: I support the sentiments expressed by the Hon. Mr Elliott on this matter. I have some grave anxieties about the possible consequences of the closure of Hillcrest Hospital, and I want to reflect on the hospital's various functions and express concern that some of those functions may be lost.

The hospital serves at tertiary level as an institution for treating quite difficult cases of mental illness with specialist care, specialist research, and undergraduate and postgraduate teaching. It also provides an acute admissions centre where people acutely and potentially dangerously psychiatrically ill are received for immediate and rapid treatment and assessment. It also serves to provide treatment for the general run of population who may require a short period of hospital care for a depressive illness which will have a good outcome. It provides that sort of care for various conditions if the patient is uninsured and not able to take advantage of the several private hospitals which are spread around the metropolitan area and which provide general psychiatric care.

Like the Hon. Mr Elliott, I do not oppose the decision to close the hospital *per se*. I do not believe that nothing must ever change. I do not believe that psychiatric care of the community cannot be improved by a dispersement of a number of the facilities throughout the community. It is possible that if a lot of the general psychiatric care is dispersed into other health units in the community Glenside will be able to take over a number of the acute and training functions, but our anxiety is that maybe one will occur and not the other, namely, the closure without the replacement of facilities, or that there will be a significant delay.

We are well justified in being anxious about this because, if general psychiatric care and academic research are to be dispersed, they will be dispersed amongst the general teaching hospitals, which already have professorial units and some psychiatric beds. However, I do not know of one of those institutions that is in a budgetary situation to accept an expansion without a large injection of money from a State that is strapped for cash. The State is strapped for cash, indeed. The State is paying $600 000 a day in interest on the bail-out money for the State bank. The State has in real terms reduced the budgets of all the public teaching hospitals.

If we look back in history to the deinstitutionalisation of the intellectually disabled, particularly the children, we find that, whilst many of them have functioned in the wider community with some assistance, a number of them have been cast out of those institutions into a situation where they lack even the basic care or the fulfilment of their basic needs. In the field of the intellectually disabled, deinstitutionalisation did not mean replacing the institutional service with a broadly-based, adequate community service. In fact, it meant the unloading of a burdensome obligation by the

Government without picking up the burden at the other end in the community, as it should have.

My former colleague—an old trooper whom I respect a great deal—the Hon. Ren DeGaris once said that there are two reasons for doing anything in politics: there is a good reason and there is the real reason. If we look at Hillcrest we see a property that was built in the days when hospitals were all low-rise or single storey, and different units were hundreds of metres apart. That was the way they built them then to stop cross-infection.

Land was then cheap out in the sticks, five miles from the GPO. It is worth a drive around the north-east to look at the amount of potentially very valuable residential land in the form of health institutions that the Government owns. Another institution, the Bedford Park Sanatorium, is now the site of the Flinders University. If I were in Government and faced with increasing taxes, adverse polls and, amongst other things, a $600 000 interest bill a day, without touching the $2.4 billion capital problem that is lurking behind it, I would see these institutions as potentially valuable housing estates, and maybe beneath the surface the real reason is a budgetary need to realise the land value of institutions such as Hillcrest.

The replacement of the general facilities and the beds to which a practitioner can refer an uninsured patient for a specialist opinion and a short hospital stay at public sector expense may be a pious hope. Maybe the realisation of the land value of properties such as Hillcrest is the real reason, and the pious intention of absorbing the general psychiatric services into other health units, broadly community-based, is a pious hope that somehow the already very strained budgets of those institutions can somehow be bolstered in a way to replace this facility.

People are very sceptical about the outcome here. The Hon. Mr Elliott made the point—and I support him 100 per cent—that for the Government to appear fair dinkum about the care of the patients and not just the value of the land it has to put the new units into place before that hospital is closed.

In 1983, when I was in England looking at the law of insanity and diminished responsibility, I had some discussions with a professor of psychiatry. I asked him about the public sector—the British national health scheme—in terms of its management of reactive depression with psychotherapeutic counselling, and I discovered that it does not exist on the national health. If one is psychiatrically ill in Britain and is sick enough to need hospitalisation or drugs one gets it. If one needs any other sort of psychiatric support (this was 1983: it might be different now) one needed private insurance to go into a private clinic or consult with a private specialist.

With the situation today, in which more and more people are dropping their hospital insurance out of necessity, I am really anxious that those publicly funded beds into which short-term patients can be referred by general practitioners will disappear, will not be replaced in adequate numbers and that maybe we will end up with a system as I found in England in 1983.

I will comment further on the Hillcrest site. If that land is sold for housing development (I am sure the Government wants to do that—it is one way to break the back of the $600 000 a day), it will be like the airport syndrome because the Government is saying that it will keep James Nash House but, once the housing estate encroaches upon James Nash House, all the residents will object as they will have fear and superstition—the Salem witch philosophy—

The Hon. T.G. Roberts: I'm sure you will help dispel it.

The Hon. R.J. RITSON: Yes. There is substantial anxiety amongst the profession that pressure will come upon the Government to dispose of James Nash House as well if it proves an embarrassment to the land values in any potential housing estate on the former Hillcrest site. That hospital was purpose built and has been opened for only three or four years. If that facility has to be replaced, either it will be an inferior facility or a very much more expensive facility. Probably Governments would tend to go for the inferior facility as it cares for only about 30 people, many of whom do not vote whereas I am sure that the middle class occupants of the former Hillcrest Hospital housing estate do vote.

The Hon. T.G. Roberts: You're getting cynical in your old age.

The Hon. R.J. RITSON: Yes, I am: cynical enough to use the word 'Governments'—plural. That is a sad commentary on the concept of justice and compassion. Governments are as commercial and can be as unjust and lacking in compassion as can natural persons. I have now reached a point where I will start to repeat myself. I will resist that temptation.

The Hon. Anne Levy: Pass that advice on to your Leader.

The Hon. R.J. RITSON: I am tempted to start again. These anxieties are real and are reverberating around the community. I support to the hilt the Australian Democrats in raising the matter and support the motion.

The Hon. T. CROTHERS secured the adjournment of the debate.

HEAVY TRANSPORT

Adjourned debate on motion of Hon. Diana Laidlaw:

That in relation to the agreement signed at the special Premiers Conference on 30 July 1991, this Council—

1. supports the proposed national heavy vehicle registration and regulation scheme.

2. opposes the proposed national heavy vehicle charging scheme based on InterState Commission (ISC) mass/distance principles, on the grounds that the charges will have a severe social and economic impact on South Australia's heavy vehicle industry, industry and consumers in general and our rural/remote communities in particular; and

3. calls on both State and Federal Governments to dedicate a substantially larger proportion of revenues already gained from fuel taxes for road construction and maintenance programs.

which the Hon. T. Crothers had moved to amend by leaving out all words after 'Council' and inserting:

1. supports the national heavy vehicle registration and regulation scheme.

2. congratulates the South Australian Government for successfully arguing for a two zone proposal which will provide protection for our State because we will be able to influence the levels of charges on heavy vehicle transport within our zone and therefore will ameliorate severe social and economic impact.

(Continued from 11 September. Page 734.)

The Hon. PETER DUNN: I wish to take up the time of the Chamber for about 10 minutes as this is an important issue. We have before us a motion condemning and yet supporting parts of the heavy vehicle registration and regulations scheme. I wish to oppose one part as it is very discriminatory, namely, the section dealing with very heavy vehicles which really applies only to primary producers. There are no road trains and no really heavy vehicles operating other than in the country, but there are an enormous number of vehicles—semi-trailers—with a gross combination weight of around 30 tonnes that ply between the capital cities. I agree with the Hon. Diana Laidlaw's motion and

oppose the Hon. Trevor Crothers' amendment. He has got it wrong.

The Hon. T. Crothers: Not again!

The Hon. PETER DUNN: Yes, again. When Federal Parliament set out to fix the problem of transport around Australia, it was aiming at the Eastern States from Brisbane down to Sydney and Melbourne and back again. However, the legislation has perhaps hit that target but ricocheted off and will hit the rural community extremely heavily if it becomes law. The legislation is draconian and stupid. The Minister who put it up is as thick as a brick. He has not looked at the effect of the legislation that he has proposed.

The Hon. T.G. Roberts: You're not impressed, Peter.

The Hon. PETER DUNN: Not at all impressed.

The Hon. ANNE LEVY: I rise on a point of order, Mr President. The honourable member is making derogatory comments about a member of this Parliament. He described him as being 'as thick as a brick'. I suggest that the honourable member be asked to withdraw that remark.

The PRESIDENT: I ask the Hon. Mr Dunn to withdraw the remark.

The Hon. PETER DUNN: In my defence, I was speaking about a member in the Federal Parliament. If the Minister had been listening to the debate she would have understood that.

The PRESIDENT: The same rule still applies: it is not fitting to pass derogatory remarks about members of Parliament.

The Hon. PETER DUNN: I withdraw the statement that he is 'as thick as a brick' and say that he is as thin as a reed. I do not think he understands what he is doing in relation to this legislation. The legislation the Federal Minister is putting forward is aimed in a particular direction, but it is not hitting the mark. There are trains between those capital cities. Goods can be transported up and down that train line for as long as we like. I want to refer to the effect Minister Brown's legislation will have on vehicles in Australia. It has been split into two sections: the Eastern States will pay a little more than the rest of Australia. However, that does not really matter because the vehicles that will be hit most of all are the road trains.

We use road trains for shifting cattle, grain and a little bit of fuel from Alice Springs to Darwin. They are the only runs that road trains do of any consequence. Let us have a look at what happens to the registration under the proposed fees that will be applied to those vehicles. In South Australia, if a semitrailer has a gross combination weight of 39 tonnes, at the moment the registration is about $1 732. Under the proposal it will be $6 000. For a semitrailer with a gross combination weight of 42.5 tonnes, in South Australia the registration is $2 684; under the proposed legislation and charges it will become $7 750. Up to that weight, these vehicles ply virtually anywhere on the roads, and they can travel on any of the major highways.

However, road trains, the vehicles about which I have just spoken, will transport most of the cattle out of the centre of Australia, and most of the grain around those areas where there are no railways (and the only reason they are there is that there are no railways, and I cite the example of Eyre Peninsula in particular.) To register a road train with an overall length of 115 feet and with a gross combination weight of just in excess of 70 tonnes in South Australia costs $6 458, and that will rise to $11 250. That cost will be reflected in shifting those cattle out of that country. I do not think the Minister understands what he is doing to the environment if he does this. For instance at Marree—and I was there last week—it will cost $1.30 per kilometre for one deck of a trailer (and there are two decks on a trailer). However, if these fees come in—and we must not forget that this $11 000 is for each trailer; we must multiply that by three for a road train, so we are looking at $33 000 as opposed to $6 000 at the moment—we will be looking at an increase in the cost per deck of perhaps another 20c, 30c or, perhaps, in some cases, 50c, which means that it will now cost $1.80 per deck per kilometre to get those cattle out of that area. At the moment, road trains are in full flight in the north of South Australia trying to get out those cattle that are fat, or those that are not in such good nick into agistment. If that were to take place, that would be a disaster.

Two things in particular have been the saviour of the north of Australia. One is that trucks have been able to shift the animals away when drought hits the area—and we know that it is a very drought prone area. The other saviour is polythene pipe, which enables water to be distributed. If we make the cost of running those trucks so expensive when there is no other way of shifting those cattle, all we will do is cause those people to say, 'Well, I can't afford to shift my cattle' and they will stay there, and there will be an ecological disaster, as there was back in the 1930s.

I was in that area last week, and the temperature was 38 degrees at Birdsville and Mt Dare. There was a quite strong north wind, but there was not one skerrick of dust on the South Australian side of the border. There was a little dust opposite Finke, but that is a sandy area. If there were going to be dust, it should have been now because there has not been rain in that area of any consequence for two years and four months. In fact this year, Tieon station, which is close to Mt Dare, has had under an inch of rain—18 millimetres of rain. For the past 2½ years, it has had a total rainfall of under four inches. So, one can see that the country is extremely dry, but there is no dust there because the cattle are taken away. This legislation will just about wreck that.

For a trailer to bring cattle from Tod Morden station, which is just below the Tieon Station, it is $1.20 per deck per kilometre. A road train has six decks so one can work out how much it will cost. As it is 1 000 kilometres to Adelaide, it is pretty easy to work out how much it will cost one to shift one's cattle. If cattle prices drop much more, and if road train prices increase much more, that will be the end of shifting those cattle. I am quite upset to think that this is a very discriminatory tax when there is no other way of shifting those cattle. There is a railway line in that area but, because it costs $1 500 every time the train that goes to Alice Springs is pulled up, the train will not stop to pick up five or six crates with perhaps 100 cattle in them all told. So, that transportation is left to road trains.

Of course, the other advantage of road trains is that the fact the cattle are placed on there and they land right at the abattoirs where they are going. So, there is less bruising and less damage to the cattle. Whereas, if one has to drive them into a railhead, load them, unload them again (because the train takes so long to get to Adelaide they have to be unloaded and watered and reloaded again), the animals are damaged. So, there is really no alternative but to take the cattle out of the north east area of South Australia by road train. So, we will see those people in that area having to pay this enormous impost to get their cattle out when there is no other way of doing it. So, they are a captured audience for Minister Brown so that he can quite illegitimately put up the fee, and they cannot do anything about it; they have to use it, as they have no alternative.

Not only that, the new heavy vehicle control scheme, under this new National Road Transport Commission will include loading codes, design and construction standards and roadworthy standards. I do not disagree with any of

that: that is legitimate and good. We must have a standard size for our trucks, standards in breaking and stability and so on; I have no argument about that. One of the good things I can see coming out of it, which this State has resisted for many years, is volumetric loading. For years this State would not wear volumetric loading and there is a very good reason for that.

If you load a semitrailer or road train with cattle and drive it down the road there is a very real likelihood you will be pinged for being overweight; the brown bombers will get you somewhere along the road. In Queensland and the Northern Territory, which have volumetric loading, trucks are built to a cubic capacity. You can fill them up with cattle and if the vehicle is one or two tonnes overweight that is accepted, although much of the time the road trains run underweight. However, in South Australia that is not allowed; there is a weight per axle and if that is exceeded you get a very heavy fine.

The Hon. R.J. Ritson: If it rains on your sheep you go overweight.

The Hon. PETER DUNN: As the Hon. Dr Ritson said, if it rains when you are carting sheep, or even cattle, the load is likely to be overweight. But how can you tell how much weight you have on your truck? If you are at Clifton Hills and load very heavy steers on your vehicle, how do you know how much they weigh? There is no weighbridge in that area and there is no way of weighing the vehicle until you get to Port Augusta. A number of cases have been reported to me of vehicles getting down as far as Gepps Cross and being turned around so that they could be weighed and pinged for being overweight.

I think that under the new regulations we will find that volumetric loading will be introduced in South Australia in the interests of commonality with regulations throughout the Commonwealth. I would agree wholeheartedly if that were to occur. For the shifting of livestock, volumetric loading is the only way to go, and the sooner it happens the better.

It is interesting to note the cost of running semitrailers, and that is what Minister Brown has based these new charges on. He says that semitrailers do so much damage that they need to be charged this great amount of money. Let me put this situation to the Council: the average weight per axle of a road train is just over six tonnes, but a two-axle truck can have eight tonnes on the axle. It is the number of axles and the weight per axle that does the damage, not the gross combination weight because that weight is spread over many axles in the case of a road train. I do not know what Minister Brown is arguing about.

It is interesting to note that the InterState Commission found, and later reports both by former ISC Chairman Ted Butcher and an 'over-arching' group within the Public Service confirmed, that heavy truck operators could and should pay their share of road upkeep. In fact, these various groups found that truckers did pay their way as a group. I do not know what Minister Brown is going on about. They are paying 15.6c a litre as diesel excise, and that is treated as a road tax. A road train will use about three litres to the kilometre when fully loaded, so a lot of fuel excise is going to road funding.

Under the National Road Transport Commission regulations there will be four components built into the new fee: 15c a litre from fuel excise; $20 a year for administration, that is, to pay public servants to administer it; a $250 a year 'access charge'; and a mass-distance charge as applicable, so if you drive over a certain distance you will pay a mass-distance charge. How will they control that? A mechanism will be attached to the trailer to determine the distance travelled and people will pay on that basis.

Unless road trains are moving or have stock on them they do not make any money. People cannot outlay $1 million for a road train and expect it to sit in the shed; yet quite legitimately it will incur this mass-distance charge. Road trains do many kilometres a year but thousands of those kilometres are done on private roads in the outback on station country, not on roads constructed by Governments. Half that time those road trains are empty because they have to pick up stock. If you are travelling from Adelaide to Birdsville what can you get on there when you have a cattle crate on the back of it? You may be able to load it with hay, but it would take a fortnight to unload it. Road trains run empty a great part of the time, and the Minister seems to have got his facts a bit astray.

By the turn of the century with these figures it looks like costing $44 000 to register a road train, and that is up-front: you have to find it before you start. So, if I as a young entrepreneur wished to buy a road train, I would borrow $1 million from the bank and still have to find $44 100 before I could run it on the road because that is what the Minister has deemed. If I were to do that today in the Northern Territory I would pay $1 400 for a road train, yet Minister Brown wants to make it $44 000 plus in the future. That will increase the cost of goods because it will increase the cost of freight for any semitrailer.

The interesting thing about freight in this State is that the farmer pays when things come to him—fertiliser, consumables and fuel—and when he sends sheep and grain to market he again pays for freight. It is not paid by consumers; it is paid both ways by the farmer. That is the unfair part of it all, that it is hitting one section of the community and not all of it. From Dubbo to Sydney, which is only a couple of hundred kilometres, it will add $3 per tonne to general freight. If it were a longer distance, for instance, from Mount Isa to Toowoomba—and that is the cattle-selling centre of Queensland; there are a lot of cattle in the Mount Isa area—it will add $40 to a tonne of freight. Quite frankly, the figures are frightening. I think that Minister Brown needs to do a little soul-searching before he implements this.

Last year about $8 billion was put into the Federal Government's coffers from the road transport industry ($5.4 billion in fuel tax alone) yet we only got $4.5 billion for road expenditure. This is from a Government that says that the user will pay. If the Government is going to use my money I expect it to pay something back to construct some roads. I am sick of not having any roads in this State. Today I received a reply to a question that makes this matter even more interesting. The reply states that in 1990-91 the Government will spend $5.4 million on black spot programs in South Australia. How much will be spent in the country—$756 000. The country gets a miserable $756 000, yet it has the largest distance of roads. The people in the bush pay to and from for freight, yet the Government sees fit to spend a paltry $750 000-odd in the country. Port Lincoln gets $25 000 to modify the lighting on the new west road in Oxford Terrace. That is not in the country, it is in the town. Other amounts are to be spent in Whyalla, Yankalilla and Gumeracha. One really wonders where the Government is aiming.

The Hon. Anne Levy interjecting:

The Hon. PETER DUNN: The Minister might interject, but she is a member of the Cabinet and she could give the matter of bit of thought and have a little bit of money spent on the country, because my rural constituents, my farmers, are feeling very hurt. It only makes their pain a lot more

severe when they see that in the future—let alone in the present—their costs are going up while the prices for their products are tending to go down. We are told that we have a smart country, but it seems to be smart in the country but pretty poor in the cities when it comes to handing out a bit of money to those people who produce a lot of export income for this country.

I admit that rural industry produces only about 4 per cent of the gross domestic product, but that does not include add-on costs and the effect on employment. I provided an example this afternoon when I asked a question about 20 000 stock that were sent east instead of to Adelaide. Members should work it out for themselves—it should not be difficult—how much employment that would generate and how much money it would bring into this State. I suggest that we could have had that situation if about $300 000 or $400 000 had been spent on the Coopers Creek crossing, but the Government was unable to see past the end of its nose. So, we have lost that opportunity—and I think we have lost it for good, because roads to the east are better, so the cattle will suffer less bruising. Therefore, the cattle will go east instead of coming down the bumpy old Birdsville Track, although to the State Minister's credit some money has been spent on that track and it is far better than it was. However, I suggest that he has spent that money not because it will help primary producers but because of the tourists that will use it.

So, in my opinion, there are dire implications for the future if this motion is not passed and if the message is not sent to Canberra saying, 'For heavens sake, Minister Brown, don't proceed with your add-on costs to registration.' I have not talked at any length about the carting of grain by road train on Eyre Peninsula but these measures will add to the cost quite dramatically. I anticipate an increase of $2 a tonne in the area in which I grow wheat because of these costs. That is the sort of figure we are looking at. An increase of $2 on top of the $11 that I pay now is an enormous increase, but they are the sorts of figures that truckies tell me will occur. Only two road train operators, with about 15 road trains between them, cart wheat on Eyre Peninsula—imagine the cost that will have to be found up front.

I do not wish to take any more time other than to ask this Chamber to look very carefully at this motion and to send a message to the Federal Minister, because South Australia will miss out more than any other State. South Australia has more vast areas than any State other than Western Australia, but Western Australia does not have a lot of stock in those areas. South Australia does, and we need to transport that stock. The only way we can do that is by road train—there is no other way. If we finish up with registration fees of $40 000 plus, as has been indicated by the Minister, we will be the loser more than any other State, including Queensland and the Northern Territory. I support the Hon. Diana Laidlaw's motion.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

PROSTITUTION BILL

Adjourned debate on second reading.

(Continued from 11 September. Page 724.)

The Hon. J.C. BURDETT: I oppose the second reading of this Bill because I disagree with it in principle. I do not consider it to be amendable to meet my view because it proceeds on entirely different principles from my own. If the Bill does pass, I will move an amendment to provide a sunset clause as I believe that such radical legislation should be re-examined so that we do not have the dreadful debacle that applies in Victoria. I note in passing that a large part of the problem in Victoria is because part of the Act has been proclaimed and part of it has not. I therefore propose to move an amendment to provide that only the whole of the Act may be proclaimed and that it not be proclaimed in part. When I spoke on the Hon. Carolyn Pickles' Bill in 1986, I said at page 902 of *Hansard*:

> I oppose the second reading of this Bill. The practice of prostitution is degrading of humanity and of women in particular. Against the background that not prostitution itself, but certain practices relating to prostitution are presently and have, in some cases, long been illegal, to decriminalise them now would amount to the State condoning this degradation.
>
> I refer to the background paper on the law relating to prostitution tabled in this place. It is very patent that this was made available to the Hon. Carolyn Pickles before she made her speech. I am pleased that the Attorney-General has somewhat belatedly made it available to all members. The penultimate paragraph on page 1 states:
>
> > Some sections of the community regard prostitution as an immoral and undesirable activity. These people tend to take the view that it is the duty of the State to curb prostitution and to minimise its effect through the criminal law. This view appears to be based on the premise that the State should be responsible for establishing and maintaining moral standards.
>
> While I do not see why the State should disregard moral standards (and I shall say something about this later) I think that this description of the views of opponents to decrimilisation by the unnamed author or authors of the background paper is at the same time naive and patronising. It is true that it is not necessarily the role of the State to uphold morality as such, particularly sexual morality. For example, according to accepted moral codes adultery is gravely immoral but not only is it not an offence but it now has practically no legal consequences.
>
> My opposition to the decriminalising of practices relating to prostitution is on the grounds that the practice is degrading, exploitative and socially undesirable, relating as it often does to the drug trade, organised crime, blackmail and other anti-social practices. I am by no means satisfied that it will cease to be related to these practices when and if certain practices relating to prostitution are decriminalised. Incidentally, I find it astonishing that the author or authors of the background paper are not named.

I was, of course, referring to the background paper to the Hon. Carolyn Pickles' Bill and not Mr Matthew Goode's paper on the present Bill. I also said:

> Our legal system certainly has its origins in the Judaeo-Christian ethic.

Further on, I said:

> Our Parliaments certainly have departed from the Christian ethic on many previous occasions but not always successfully. For example, the family law system based on the Commonwealth Family Law Act, which provides for an exclusively no fault system of divorce, has got into an awful mess and I do not think that the Commonwealth Government or the people responsible for the Act know how to get out of it. I suggest that this and other experiences indicate that we ought to be very careful before departing from the principles on which our legal system was based. We ought not to depart from those principles without good reason—and certainly no good reason has been demonstrated to me in this case.

My comments about the Commonwealth Family Law Act are as applicable now as they were when I made them five years ago.

When I say that the practice of prostitution is degrading and socially undesirable, I am not solely blaming the prostitutes for this. Some of the supporters of legalisation and decriminalisation have correctly pointed out that prostitution would not exist if it were not for the demand. I blame the clients of prostitutes more than the prostitutes themselves for the degradation and undesirable social consequences of the so-called 'sex trade'.

On the question of whether or not the law should be used to enforce the moral code, the Hon. Mr Gilfillan quoted (adopting a quotation from the Hon. Gavin Keneally, speaking on the Hon. Robin Millhouse's Prostitution Bill) Father

Bruce Vawter, a Vincentian. I will not repeat the whole of the quotation. Father Vawter said: 'Graces cannot be legislated'. This is a self-evident truth. He then said:

It is very questionable wisdom that has promoted a country or State to translate into civil and actionable law a divine word that has been sent into the soul and conscience of Christian man.

Few people today would disagree with that. As I said before, many serious breaches of the moral law, such as adultery, are not breaches of the law of the land. Immoral acts should be legislated against only if they have adverse social consequences. As I have said, I believe that prostitution does have adverse social consequences. Certainly, Father Vawter's statement is not a warrant for the legalisation or decriminalisation of prostitution, and the Hon. Mr Gilfillan does not claim that.

If the Hon. Mr Gilfillan and other members of this Council are interested in what the Catholic Church is saying about this Bill, or its predecessor that was introduced in the last session, I quote another Vincentian, Father Larry MacNamara, in a statement on 14 March 1991, part of which was reported in the *Advertiser* and elsewhere in the media. Father MacNamara is the Professor of moral theology at St Francis Xavier's seminary. The statement reads:

There is a double standard in the area of prostitution. It is not right that prostitutes are prosecuted by the law, while their clients get away scot free. But legalising prostitution is not the answer.

The first concern of the church is for people who are victims often forced into prostitution because of social conditions beyond their control—unemployment, lack of adequate social support, inadequate social security.

Drug dependency leads many young people to prostitution. South Australians must look more closely at the social conditions that foster prostitution in our cities. Of great concern is the so-called sex industry where some people make profits from prostitution. This leaves both operators and prostitutes open to coercion by the criminal element.

If our State legalises this 'industry' it would sanction sexual behaviour that we consider to be destructive of individual social and family life. At the same time it will convey to many South Australians that making it legal makes it right. This we do not accept.

Sexual expression should not be reduced to a casual and commercial meeting which often exploits the prostitute. Those who wish to introduce legislation think that prostitution will be adequately controlled by licensing, health checks and deterrents preventing 'juvenile abuse, intimidation and violence'. We question whether such legislation would be good law or effective law or for the common good.

I next refer to the article, 'Prostitution', in the September 1991 edition of the South Australian Police Department periodical, *In Brief*. Written by the Commissioner, the article states:

It is recognised that it is Parliament's ultimate responsibility to decide through legislation what it considers to be appropriate in the community interest. That is the role of Parliament and, as police officers, we accept unequivocally whatever laws are passed, and will enforce them impartially and without hesitation.

This is a commendable statement. The Commissioner went on to say:

Anything less than a clear and workable system of laws, with general community support, is undesirable and seriously harms the potential reputation of police. While I have no wish to become enjoined in what is a sensitive political issue, I do wish to express my concern about the inadequacy of the current laws governing prostitution in this State. As well, I consider there to be dangers in the proposed legislation.

The Commissioner said that new legislation is required, and referred *inter alia* to complex judicial interpretations adding to complexity on offences such as 'Keep/manage a brothel', 'Receive money, etc.' and 'Permit premises, etc.' He said:

The sex industry in South Australia is already a lucrative business. It is already heavily involved in the illicit drug trade and has the potential to become significantly involved in organised crime.

Members will be aware that this statement brought outraged protestations from some prostitutes which were reported in the media. Commissioner Hunt made a considered published statement, and I am satisfied of the validity of the statement. The situation in my view is unlikely to get better if prostitution is legalised. The Commissioner further says:

. . . the community may not be aware of the harmful relationships which exist between prostitution and organised crime and with the drug trade. In any event, on best information—

and I stress this—

any controls will only relate to about 40 per cent of the industry which really exists. Is the community really aware that prostitution is not simply restricted to female prostitution but also includes and encourages: male brothels, child prostitution and an entire range of alternative practices such as are readily depicted in pornographic literature?

The point that any controls will relate to only about 40 per cent of the industry is well taken, and it is the assessment of one who is in a position to know. If the Bill passes, illegal prostitution outside the resulting Act will continue. The article written by the Commissioner continues:

Is the community aware that should prostitution be decriminalised, there will be increased pressure placed on scarce police resources, not only to ensure compliance with whatever legislation is enacted, but to police those operating outside legal parameters, as has occurred in Victoria.

I refer to an article by Andrew Masterton in the *Bulletin* of 14 May 1991, entitled 'The Trouble with Sex'. The article demonstrates that the operation of the Victorian Act has been an unqualified disaster; as prostitutes collective spokesman Paul Hayes said, 'it is a complete failure'. He says, 'The Act must be either fully proclaimed or fully repealed.'

Of course, the Hon. Mr Gilfillan is well aware of this and has acknowledged it, has studied the situation in Victoria and hopes to have avoided the errors which were made there. To prevent parts of the Act not being proclaimed by the Government for political expendiency would be achieved by one of the amendments which I have foreshadowed, but this only goes a small part of the way. The abject failure of the Victorian system is, I acknowledge, no proof that the Hon. Mr Gilfillan's Bill will fail (the Victorian Act was extraordinarily badly handled), but nor is there any proof that the Hon. Mr Gilfillan's Bill will succeed—on any criteria.

The Victorian experience does show that tinkering with the law relating to prostitution with the best will in the world, which I think the Hon. Mr Gilfillan has, is fraught with danger and we can easily end up with a situation which is worse than the one which we set out to remedy. It is for that reason that, if the Bill passes (and I must say that I think that that is by no means certain) I propose a sunset clause.

The article to which I have referred quotes Sergeant Ken Ross, Head of the Victoria Police Vice Squad, as saying:

Unlawful brothels are open slather for us. We can bust people in them under the Vagrancy Act, we can walk in under cover and check for offences or under-agers. We have that right. We have the indemnity. A legal brothel is a different matter. We haven't any protection in there.

I refer again to Commissioner Hunt's assessment that 'on best information, any controls will only relate to about 40 per cent of the industry which really exists'. Commissioner Hunt is aware of the Hon. Mr Gilfillan's Bill, and he is talking about South Australia, not Victoria. The comment about the 40 per cent is not surprising because prostitutes have always been operating illegally, and if they do not like any aspect of any Act resulting from the Hon. Mr Gilfillan's Bill they will not hesitate to continue to operate outside the law.

I next refer to Mr Matthew Goode's paper, 'The Law and Prostitution'. The paper, as one would expect from Mr Goode, accurately sets out the law and the options available. I believe that the paper is flawed by a patent bias in favour of decriminalisation or legalisation. Mr Goode claims that what he calls the criminalisation option would be extremely expensive. He is learned in his knowledge of the criminal law, but I have not heard that he has expertise in costing police operations and, indeed, he does not give any details of costing, acknowledging that it is not possible to cost them. On the contrary, Commissioner Hunt, who does have expertise in costing police operations, points to the high cost of legalisation. When one adds the costs of the heavy handed bureaucratic licensing system, I am certainly not convinced that the criminalisation option would be any more expensive than putting this Bill into operation. Incidentally, I would prefer to use the term 'tightening the law' to the term 'criminalisation'.

At pages 62 and 63 of his paper, Mr Goode, I think correctly if extremely exhaustively, sets out what must be done to implement what he calls the criminalisation option. I would add that the escort agency operation must be caught, and this is probablyu covered by Mr Goode's suggestions. Also, the prostitute's client must specifically be made as guilty as the prostitute. It is iniquitous discrimination if this is not the case. At present the client must be an accessory, using that term in a general and non-technical sense, but, as far as I am aware, a prosecution has never been attempted. The client must be made guilty of a specific offence. Mr Goode's paper ought to be read in conjunction with Mr Barry Wright's critique of the paper which has been made available to all who wish to read it.

The Hon. Mr Gilfillan is quoted in the *Sunday Mail* of 29 September as saying:

> The survey by a medical team from the University of Los Angeles examined 246 prostitutes working in legal brothels in Nevada between 1982 and 1989 and found none was HIV positive.

He quoted a figure of about half found HIV positive in a survey in Washington DC and New York where prostiution is illegal. In fact, I think that Nevada is the only place in the United States where prostitution is legal.

What the Hon. Mr Gilfillan did not say was that the brothels in Nevada were run in a highly disciplined and restrictive way which would be totally unacceptable to South Australian prostitutes and is not the system contemplated in this Bill. The brothels are well out of the city, condoms must be worn (as in the Bill) and all anal intercourse is strictly prohibited. This latter no doubt largely accounts for the absence of HIV infection. Anal intercourse (and this could be male to male or male to female) is clearly contemplated in clause 30 (4) of this Bill and clearly legal in licensed brothels. In Nevada any misbehaviour by client or prostitute results in immediate expulsion. The Nevada model is tied up with the legal gambling scene. The Hon. Mr Gilfillan did not say whether the illegal brothels in Nevada were surveyed.

In 1986 the Hon. Carolyn Pickles said that prostitution laws have never succeeded in eradicating prostitution. In South Australia this has never been attempted. As appears from Mr Goode's paper prostitution as such is not illegal in South Australia. There are certain offences in connection with prostitution. The present law may have many faults (and I will say something later about how I think these can be addressed), but it can hardly be blamed for not achieving what it never set out to achieve. The argument that one can never stamp out prostitution so do not try, is worthless. One can never stamp out murder or rape or housebreaking or, to come to some of the with-it anti-social behaviour of the moment, illegal use of cars or plastering graffiti around the place, but surely this does mean that the attempt should not be made. Prostitution, in my view, is anti-social and all steps possible to subject it to the penalties of the law should be taken.

I turn now to some of the detailed provisions of the Bill. I will not go into great detail because if the Bill is defeated at the second reading this will not be necessary. Part II of the Bill setting up a brothel licensing board makes me sick to the stomach. It has been said, I think originally by the Hon. Carolyn Pickles, that this makes the State a pimp. We have far too many statutory authorities anyway administering things, most of which are not anti-social but I certainly object to this extension. If it were not in relation to such a serious matter, it would be laughable. I wonder who will compete for the doubtful honour of being the first presiding member or registrar of that board. They are given a similar status to the persons in equivalent positions to the Builders Licensing Board, the Metropolitan Taxi Cab Board and so on.

Clause 23 in regard to child prostitution is in itself commendable but could be enacted independently of this Bill. The controls on advertising of prostitution services I find pathetic, setting out petty restrictions which do not seem effective at all. The permission of small brothels without licence is one of the worst aspects of the Bill and I am sure it will be defeated in the Committee stages if the Bill passes the second reading. But I hope that members will not just breathe a sigh of relief when this is defeated and say 'Thank goodnes for that—now the Bill's all right.' A small brothel could operate in your street or next to a school or hotel or church. Apart from a residential complex or close proximity to any other brothel or adjoining another brothel there are no restrictions on the location of small brothels. In my perusal of the debates on the three Prostitution Bills which have been introduced, as far as I can recall every member supportive of the Bill in question has said that he or she personally is opposed to prostitution; they just have a funny way of showing it.

I do not believe that the Bill would be effective in controlling sexually transmitted diseases This is partly because the illegal trade would continue and because there would be frequent breaches even in legal brothels. I refer to an article about the Melbourne scene in the *Bulletin* of 6 December 1988 entitled 'Flesh City' by Kevin Murphy and Caroline Lees. They say:

> But market forces have created strong financial incentives for unsafe sex practices even in some legal brothels. Says Cheryl Overs of the Prostitutes Collective of Victoria: 'Huge cuts taken by the house, the "line-up" by which a client chooses who he will see, fines imposed by the management and the taxman looking for his pound of flesh have all quickly become realities.'
>
> It is not unusual to speak to a legal brothel worker who has earned $40 for a 10 or 12 hour shift. The implications for her incentive to stick to her safe sex guns by the end of such a night, when a client offers extra money not to use a condom, are obvious. Often, her job is on the line as well.

I said at the outset that I was opposed to the Bill in principle and would therefore oppose the second reading. If the Bill does pass the second reading I will move the two procedural amendments which I have indicated, but in fundamental matters the Bill is unamendable. If the Bill is defeated, I undertake in the next session to introduce a Bill to create a specific offence for the prostitute's client; to catch escort agencies (and I cannot understand why the Hon. Mr Gilfillan has not tackled this); and otherwise to make the laws against prostitution more workable. I oppose the second reading.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (SELF-DEFENCE) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 11 September. Page 738.)

The Hon. C.J. SUMNER (Attorney-General): Before replying to criticisms of members who have spoken on this Bill, it is essential to set the Bill in its proper context. It arises directly from concerns within the community about the ability of a private citizen to defend his or her own property or person against an unlawful attack. Great play was made of this issue at the last election. It was said, as it turned out quite inaccurately, that ordinary citizens were being convicted of criminal offences for doing nothing other than defending themselves or their property from intruders. The then Leader of the Opposition, Mr Olsen, used the case of an old lady charged for defending herself, so he said, against an intruder, as an example of a case where the use of self-defence ran into trouble with the police. When investigated, this turned out to be a fabrication by the Leader or his advisers. Nevertheless, statements such as this made during the election campaign and by other Liberal spokespersons and other people in the community raised fears about the rights of individuals to defend themselves. These fears, once raised in the community, were not allayed by assurances, despite the fact that such assurances were generally well-founded, whilst the assertions of fears were not.

So, the Government moved to set up a parliamentary select committee in the House of Assembly to look into the matter. The select committee comprised members of the Liberal and Labor Parties and the Independent Mr Evans. That select committee called for public submissions, received many and heard more. It produced a unanimous report. The Bill before the Council is in almost identical terms to that unanimously approved by the select committee. The issue was ventilated at length in the other place. It was not drafted, as alleged, on instructions by the Executive but by Parliamentary Counsel on the instructions of the select committee. Members in the other place had the benefit of the views of the Hon. Mr Wells QC, which have been quoted at great length by the Hon. Mr Griffin—for what purpose I do not know.

The opposition raised by Mr Wells in his concerns have been answered in the House of Assembly. In the event, the Opposition moved only one minor amendment and was content with the assurance that the amendment would be considered when the Bill reached this place. I am happy to do that and will refer to that matter in a moment. It now seems that, after all the public consultation, debate and unanimous recommendations the Law Society suddenly objects to the Bill. The matter has to be redebated and reconsidered all over again. I am not against further discussion in principle, but it should be clear at the outset what the discussions are about.

In order to clarify this, I intend to address many of the matters raised in debate, most of which are taken from the concerns expressed by the Law Society and Mr Wells. In so doing I welcome the views of the Opposition that it agrees that the law should be codified. It is clear that much of the misunderstanding that arose about the law came about because the community could not go to a ready source to find out what the law said. To say, as the Law Society does, that this places the law in a straitjacket is not true.

It is said that the Bill contains a great number of generalised legal concepts which are confusing and vague and will lead to confusion of the community and the courts.

With one exception, I do not agree with this criticism. The concepts of 'genuine belief', 'intentional or reckless', 'grievous bodily harm', 'criminal trespass', 'lawful arrest', 'unlawfully at large', 'unlawful imprisonment' and 'lawful authority' are all very common in the criminal law and should not occasion any difficulty at all. The same or similar phrases appear in the draft Commonwealth code proposed by the Gibbs committee; that is, the Commonwealth Criminal Law Committee chaired by Sir Harry Gibbs, the former Chief Justice of the High Court. The objection to 'reasonably necessary' verges on the absurd as it is a part of the common law test and has been for decades. The objection to 'grossly unreasonable belief' is perhaps understandable. It is intended to refer to criminal negligence as opposed to mere negligence—and I have no doubt that the courts would so interpret it given that that is how criminal negligence is described in a number of the authoritative decisions. The courts will, I believe, use it without any more trouble than they have in dealing with exactly the same concept in the law of manslaughter. The objection to 'reckless indifference' is not well-founded in the sense that the phrase is very commonly used and has a very well accepted meaning in a wide variety of contexts. However, I agree that its use in the same clause as the concept of criminal negligence is confusing and not helpful. The remedy is, however, a simple one. Nothing would be lost, and much would be gained, if it was omitted altogether. The clause would then be quite clear that what was contemplated was a test of criminal negligence.

It is asserted that the Bill somehow unwittingly diminishes the rights of the person acting in self-defence. I am unable to see how that is the case. I have not been enlightened by the debate. It is ironic that Mr Wells and the Law Society oppose the reintroduction of the partial defence of excessive self-defence, while criticising the Bill for reducing the protection offered to the person acting in self-defence. Reintroduction of excessive self-defence, reducing what would otherwise be murder to manslaughter, clearly and without any doubt acts to ameliorate what would otherwise be the harshness of the law of self-defence when applied to the community. Neither Mr Wells nor the Law Society acknowledge that the majority of the High Court to abolish this partial defence at common law was achieved, not as a matter of principle, but because some judges did not believe that they could, by judicial creativity, achieve this justice. It was not comprehensively rejected by the High Court. They also fail to mention that the Mitchell committee was in favour of this defence, that the English Law Commission's draft code recommends the introduction of the partial defence in England and Wales and that the Victorian Law Reform Commission has recommended reintroduction in Victoria. The select committee's reasons for recommending this course are perfectly defensible. In essence they are that it is unjust and unfair to convict a person for murder on the sole basis that that person acted in a grossly unreasonable manner when that is the basis for conviction for manslaughter.

The Bill is criticised because, it is said, it requires the defender to calmly and coolly assess the exigencies of the situation before acting. The Bill does not require this. This criticism proceeds upon two assumptions: first, that the Bill requires a defender to advert to the use of force in circumstances where it is unfair and/or unrealistic to require it; and, secondly, that this is different from the common law. Both of these assumptions are quite unfounded. The word

'advertence' is not used in the Bill. The requirement that the accused have a belief is identical to that used in the common law formulation quoted in the submission from Zecevic. The formula of 'belief' is also identical to that used by the Law Commission, the Gibbs committee and the Canadian Law Reform Commission—indeed all statutory versions of self-defence.

It is said that the limits on defence of property are too stringent and/or contradictory. I believe this is not so. It is said that the section will prevent the use of lethal force against a terrorist intent on poisoning a reservoir, blowing up a naval ship, or destroying a store of life-saving drugs. This example is misleading. The real question in all cases lies in the purpose of and necessity for the use of force. The example does not contain that information. It is not permissible, either under common law or under the proposed statute, to kill the terrorist merely because he or she is a terrorist. If the sole purpose of the use of force is to capture the terrorist, and that terrorist is not a threat to the user of force or any other person, it is difficult to see the justification for the use of lethal force, either under the common law or the statute as it is or should be. If the use of force is reasonably necessary to prevent harm to others, it is justified by the common law and the proposed statute.

It is said that the statute will prevent the use of force to protect others where the threat is both to person and property: this is just not so. It is said that a person should be able to use force with intent to commit murder against a malicious intruder repeatedly coming on to property and inflicting damage. The answer to that proposition is self-evident: murder is hardly the answer to this problem, nor should it be.

It is said that a police officer should be entitled to shoot at a car with the intention of stopping the escape of an offender. The answer to this is simply that the author(s) of this submission do not seem to know that, first, police instructions in South Australia rightly do not authorise such action now and, secondly, the common law to the effect that a person is entitled to use lethal force against a fleeing felon is based on the old law that all felonies attract the death penalty, anyway. In general, the limitations on the intended use of force other than to defend the person are consistent with the draft codes of the English Law Commission, the Canadian Law Reform Commission, the New Zealand Draft Code and the Queensland Criminal Code Review.

The Bill is criticised because it only permits the user of force to do what is reasonably necessary to secure freedom from unlawful imprisonment, whereas the common law allowed the user of force to do anything necessary. The answer to this is, first, it is by no means clear that the common law now says that; and, secondly, the submissions have elsewhere lauded the notion of 'reasonableness' as a fair and justifiable yardstick of community standards. Now, it seems that is to be abandoned. No reason is given for this about face except that it might be common law.

In summary, the reference to reckless indifference in clause 15 (2) should be deleted. It has the potential to be confusing and misleading. That aside, the submission of the Law Society poses no case for changing the Bill. Mr Wells would have us consider a Bill on self-defence containing six divisions and an unknown number of sections and subsections. The idea that such a Bill would convey useful and comprehensible information to the general community seems to me to be very doubtful. In the end, on the fundamental questions of, first, whether it is justifiable to use force with intent to commit murder solely in defence of property and, secondly, whether it is fair and just to convict a person of murder where the fault of that person is merely gross negligence, I take the view that the Committee and the Bill have got it right. As the honourable shadow Attorney-General has observed, the drafting is a difficult exercise, and a variety of tests are in place in other jurisdictions with a variety of forms of wording, and one may be able to take objection to all of them; commonsense must play a part here.

I now turn to two other matters that have been raised. The first is that the shadow Attorney-General raised the question when the Committee's recommendation in relation to a minor amendment to the Dog Control Act will be acted upon. The answer is that it will be dealt with either when the Act comes before the Parliament again or when Parliament settles on what it wants the general law on self-defence to be, whichever is the sooner. The amendment is hardly urgent given that we ought to get the general principles agreed first, and it is meant merely to make absolutely clear what the select committee thought to be the law, anyway.

The second matter is the amendment moved in the other place. The amendment seeks to emphasise that the Bill changes current law by looking to the honest belief of the defender rather than, as at common law, their reasonable belief. That does not change the sense of the Bill, but will result in the same state of belief being referred to twice in the same section. That will cause confusion, and so, if the amendment is to be inserted, the first reference to genuine belief will need to be removed. I have an alternative draft doing that if any member is so minded. In conclusion, I repeat that I have no objection to discussing the Bill further with anyone if that will constructively move the business on. However, I do think that we should be clear on what it is that is to be discussed. I cannot say that I am now clear on that point.

Bill read a second time.

DIRECTOR OF PUBLIC PROSECUTIONS BILL

Adjourned debate on second reading.

(Continued from 8 October. Page 872.)

The Hon. J.C. BURDETT: I support the second reading of this Bill. For many years I have felt that a Director of Public Prosecutions in South Australia was appropriate and ought to be implemented, and I am pleased that the Government is proposing to do this. The reason for such a provision, which applies in a number of jurisdictions, as the Hon. Trevor Griffin outlined in some detail yesterday, is to remove from the Government the day-to-day questions about whether or not a person ought to be prosecuted and whether or not a *nolle prosequi* ought to be entered so that a prosecution can be terminated. There has been no suggestion of any kind of malpractice in South Australia in recent times, I am pleased to say. However, because some prosecutions relate to political matters and can be politically motivated, it is proper that the power to prosecute or not to prosecute and the power to terminate a prosecution once it is initiated ought to be removed from the governmental field so that there cannot be any question of or temptation for political motivation.

Obviously there is some sort of difficulty: you have to have independence in the Office of Director of Public Prosecutions. On the one hand, he has to be removed from governmental or political influence and, on the other hand, he has to be accountable to Parliament and ultimately to the people. Looking at the Bill and the amendments proposed by the Hon. Mr Griffin, the Government cannot

have its cake and eat it: it cannot appear to be setting up an independent Director of Public Prosecutions but still have him under the control of the Attorney-General.

The Hon. C.J. Sumner: It happens just about everywhere else in the world. It certainly happens in the United Kingdom.

The Hon. J.C. BURDETT: If that is the case there is no point in it.

The Hon. C.J. Sumner: Vote against it.

The Hon. J.C. BURDETT: If the Attorney reads again what the Hon. Mr Griffin said yesterday, he does set out—

The Hon. C.J. Sumner: I know what the Hon. Mr Griffin said. The fact of the matter is that the DPP in the United Kingdom was and still is subject to the direction of the Attorney-General, full stop. That has been so for decades.

The Hon. J.C. BURDETT: That comment, I think, was made.

The Hon. C.J. Sumner: Well don't misrepresent the situation.

The PRESIDENT: Order!

The Hon. J.C. BURDETT: The situation in Canada is quite different.

The Hon. C.J. Sumner: It's not.

The Hon. J.C. BURDETT: It is.

The PRESIDENT: Order! The honourable Attorney-General will have the chance to respond.

The Hon. C.J. Sumner: He is making incorrect statements.

The Hon. J.C. BURDETT: The honourable Attorney has obviously not read what the Hon. Mr Griffin said yesterday, and what he read from the—

The Hon. C.J. Sumner: That was a proposal of what should happen in Canada. It wasn't what actually happens in Canada.

The Hon. J.C. BURDETT: The honourable Attorney is fast talking me out of the Bill. The only merit in having a Director of Public Prosecutions is to do just that.

The Hon. C.J. Sumner: You're wrong.

The Hon. J.C. BURDETT: It is: there is no other point. You might as well forget it otherwise. Whatever the honourable Attorney says, it is my view—and I am putting it—that the only point in having an independent Director of Public Prosecutions is the fact that his day-to-day decisions as to who to prosecute, who not to prosecute and when to terminate a prosecution must be taken out of the hands of Government.

The Hon. C.J. Sumner: It was never in the hands of Government.

The Hon. J.C. BURDETT: Well it is.

The Hon. C.J. Sumner: Then you do not know anything.

The PRESIDENT: Order! The honourable Attorney-General can enter the debate at the proper time.

The Hon. J.C. BURDETT: At the present time the power to prosecute, not to prosecute or to terminate a prosecution is in the hands of the Attorney-General.

The Hon. C.J. Sumner: But not in the hands of the Government.

The Hon. J.C. BURDETT: All right, it is in the hands of the Attorney-General who is a Minister of the Government.

The Hon. C.J. Sumner: It is not in the hands of the Government.

The PRESIDENT: Order!

The Hon. J.C. BURDETT: The object of having a Bill like this relating to a Director of Public Prosecutions is to remove it from the Attorney-General who is a Minister of the Government and a member of Cabinet. At least to some extent, and not in every case, the Attorney does have an independent role, but the Attorney-General is a Minister of the Government and a member of Cabinet. The only purpose that I can see for having a Director of Public Prosecutions is to make that step once removed: to have a measure of independence so that the Attorney-General is not in control on a day-to-day basis of who to prosecute, who not to prosecute and when to terminate a prosecution.

The Hon. C.J. Sumner: He is not now.

The Hon. J.C. BURDETT: Well the Attorney-General is.

The Hon. C.J. Sumner: He doesn't do it on a day-to-day basis. What are you talking about?

The PRESIDENT: Order!

The Hon. J.C. BURDETT: It is the Attorney-General who does have that power and control at the present time.

The Hon. C.J. Sumner: You don't know what you are talking about.

The PRESIDENT: Order! The honourable Attorney-General can enter the debate at the proper time.

The Hon. C.J. Sumner: He doesn't know what he is talking about.

The Hon. J.C. BURDETT: I do. It is the Attorney-General who ultimately can ensure that a *nolle prosequi* is issued. The power is delegated, but it is ultimately in the hands of the Attorney-General.

The Hon. C.J. Sumner: That's right.

The Hon. J.C. BURDETT: It is the object of setting up a Director of Public Prosecutions—

The Hon. C.J. Sumner: It's not, you know.

The Hon. J.C. BURDETT: Well you just said it was.

The Hon. C.J. Sumner: It's not.

The PRESIDENT: Order! The Hon. Mr Burdett has the floor.

The Hon. J.C. BURDETT: What I said was it was ultimately in the power of the Attorney-General whether or not to issue a *nolle prosequi.*

The Hon. C.J. Sumner: I agree with that.

The PRESIDENT: Order! The honourable Attorney-General will cease his interjections. The honourable Mr Burdett.

The Hon. J.C. BURDETT: The only point in having a Director of Public Prosecutions is to remove this power to prosecute, not to prosecute and to terminate a prosecution from the Attorney-General who is a Minister of the Government—

The Hon. C.J. Sumner: That's not right.

The PRESIDENT: Order! The honourable Attorney-General will come to order.

The Hon. J.C. BURDETT: The honourable Attorney will have his reply. I am saying that I cannot see any point in this Bill if that is not the object of the exercise. I am saying that the Government cannot have its cake and eat it: that it cannot appear to remove these steps from the political arena and yet retain control—

The Hon. C.J. Sumner: It is not in the political arena.

The PRESIDENT: Order! The honourable Attorney will have the opportunity to enter the debate in a proper manner.

The Hon. J.C. BURDETT: It is, of course. The Government cannot appear both to set aside the Office of Director of Public Prosecutions and also control him.

The Hon. C.J. Sumner: The Government doesn't control him; it never has controlled him.

The PRESIDENT: Order! The honourable Attorney-General will have the opportunity to put his point of view.

The Hon. C.J. Sumner: Why does he keep misrepresenting the situation?

The PRESIDENT: Order! The honourable Mr Burdett is entitled to debate the matter as he sees it. The Attorney-General will come to order.

The Hon. J.C. BURDETT: I am not misrepresenting anything.

The Hon. C.J. Sumner: You are. It has never been controlled by the Government.

The PRESIDENT: Order!

The Hon. J.C. BURDETT: Yes, but he is a Minister of the Government and the Director of Public Prosecutions is not. I agree with the amendments that have been proposed by the Hon. Mr Griffin. The first is the qualifications for appointment. The Bill provides that he be a legal practitioner of at least seven years standing, and the Hon. Mr Griffin proposes at least seven years standing in lieu of five years, the same as the minimum qualification required of a Supreme Court judge, and that seems to be reasonable; and the term of office is to be changed to a fixed term of 10 years in lieu of seven years to give a greater measure of independence from the Government, and that is what I have been talking about. In other jurisdictions it is longer than that.

The Hon. C.J. Sumner: The Attorney-General has always been independent of the Government in this area.

The PRESIDENT: Order! The Attorney-General will come to order.

The Hon. J.C. BURDETT: It is necessary to see that the Director of Public Prosecutions is independent of the Attorney-General, if the Attorney would prefer that term to 'the Government'.

The Hon. C.J. Sumner: I disagree with that.

The Hon. J.C. BURDETT: All right, the Attorney-General disagrees. Amendments will be moved and he can speak against the amendments.

The Hon. C.J. Sumner: Do not misrepresent the situation.

The PRESIDENT: Order! The Attorney-General will cease his interjections.

The Hon. J.C. BURDETT: Perhaps the Attorney-General will agree with the 10-year term in lieu of the seven-year term. As I have said, in other jurisdictions the term of office is to age 65 in one case, or a much longer period than the 10-year term.

The Hon. C.J. Sumner: It is not true generally, either.

The PRESIDENT: Order! I do not know whether the Council is deaf or not.

The Hon. J.C. BURDETT: The Attorney-General should not make stupid statements like that because all I said was 'in some jurisdictions', and what I said is correct. The Bill does not make any provision for salary, and there ought to be some provision for that, again in the interests of independence.

Perhaps most importantly there is the question of removal. The removal ought to be on the basis of an address of both Houses of Parliament so that the Government is not in the position to remove a Director of Public Prosecutions of whose actions it does not approve. That ought to come before the Parliament in the same way as does the Auditor-General, the Ombudsman and so on. It is certainly accepted that on questions of policy the Government ought to be able to direct the policy, as it does at present.

The Hon. C.J. Sumner: What policy does the Government direct?

The PRESIDENT: Order! The Attorney-General will have a chance to enter the debate.

The Hon. J.C. BURDETT: The policy as it is referred to in the Bill.

The Hon. C.J. Sumner: The Government does not and never has made those directions.

The PRESIDENT: Order! The Attorney-General can listen to the debate and answer it after the Hon. Mr Burdett has put his views. He will have his opportunity. The Hon. Mr Burdett would do better to ignore the interjections and address his remarks to the chair.

The Hon. J.C. BURDETT: It is set out in the Bill that the Government may give directions on matters of policy.

The Hon. C.J. Sumner: It does not say that.

The PRESIDENT: Order!

The Hon. J.C. BURDETT: That ought to apply. On directions with regard—

The Hon. C.J. Sumner: It does not say that.

The PRESIDENT: Order! The honourable Attorney-General. Order! The Attorney-General will have to come to order.

Members interjecting:

The PRESIDENT: Order! The Attorney-General will come to order. The Hon. Mr Burdett has the floor and I ask the Attorney-General to respect the speaker on his feet.

The Hon. J.C. BURDETT: The Government ought not be able to direct or give directions.

The Hon. C.J. Sumner: You are wrong.

The Hon. L.H. Davis: He is entitled to have a point of view. You can rebut it later.

The PRESIDENT: Order! The Hon. Mr Davis will come to order.

The Hon. J.C. BURDETT: The Government ought not to be able to give directions in particular matters to the Director of Public Prosecutions, otherwise there is no point in having the Bill. I might have changed my mind about whether I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I am very surprised that the Hon. Mr Burdett does not understand even the most fundamental concepts of the role of the Attorney-General and the role of the Government. The fact is that there is nothing in this Bill which gives power to the Government to direct the Director of Public Prosecutions in relation to his prosecutorial functions. It gives the role to the Attorney-General. The conventions are clear on this. They have been stated by me in this Council on previous occasions, that the Government—that is, the Cabinet—is not entitled to direct the Attorney-General in the exercise of its independent functions in relation to the prosecution of the law. So, it has nothing to do with the Government, and never has.

I have said that, and I have never accepted directions from my Party, from Cabinet or from anyone else in relation to decisions dealing with the exercise of the prosecutorial discretion. I draw the attention of honourable members to the statement that I made on 25 August 1988 because that statement dealt with the role of the Attorney-General in our constitutional system. I thought that it was a comprehensive statement, which dealt with the office of the Attorney-General and outlined what its special role was. It dealt with the responsibilities of the office of the Attorney-General both in relation to the criminal law and the civil law and the protection of the public interest. I did that because I was concerned at that time about the manner in which the press and some members of Parliament were treating decisions that were to be made by the Attorney-General as if these were decisions to be made by the Government.

Regrettably, these sorts of statements were being made by members of Parliament, including the shadow Attorney-General, who should have known better. I wanted to ensure that the public and the Parliament were aware of the special responsibilities of the Attorney-General. Unfortunately, as I said, when there were debates about whether or not someone was released on bail appropriately or debates on appeals against sentence and a number of issues, it was made to

appear as though they were decisions of the Government when they were not. They were decisions for the Attorney-General exercising his independent functions as outlined in that statement. I concluded that statement as follows:

I have on previous occasions (*Hansard* 12 August 1987, page 110) indicated my view that the public interest is best served by having an elected Minister in the form of the Attorney-General responsible and accountable to the Parliament in relation to the criminal justice system and the protection of the public interest before the courts (that is, the independent functions which I have outlined). However, in exchange for this accountability it is important for there to be some understanding of the role of the Attorney-General in our constitutional structure, derived as it is from the Westminster system and, in particular, an understanding that in relation to certain functions the Attorney-General must act independently of the Government.

Although the principles that I have outlined are well established as part of our legal and constitutional structure, they are apparently not well known to the public, the media or, indeed, all members of Parliament. I trust that this statement will be useful in clarifying any misconceptions in this area and contribute to a better understanding of the role of the law officers of the Crown and in particular the Attorney-General.

I have on previous occasions set out my views about the role of the Attorney-General and that my view is that the public interest is best served by having an elected official independent of Cabinet responsible for the accountability of decisions in relation to the criminal law. Of course, that is exactly what one does not get with an independent Director of Public Prosections. One has a person who is not accountable to anyone, if what the Hon. Mr Burdett said is upheld. Regrettably, the understanding that I called for because of my concerns in August 1988 was not given to me or to the public by the Council.

Regrettably, an attempt was made to undermine the office of Attorney-General and me personally by a quite scurrilous smear campaign initiated in particular by the then Leader of the Opposition (Olsen), and others in this Parliament. Regrettably—

The Hon. R.I. LUCAS: On a point of order, Mr President, I ask whether those words constitute a reflection on the integrity of a former member of this State Parliament and a current member of the Federal Parliament. The Attorney made an allegation of the initiation of a scurrilous campaign directed against a current Federal member of Parliament and a former member of this State Parliament, and I ask that he withdraw and apologise.

The PRESIDENT: Yes, I think the Attorney has gone beyond the bounds, and I ask him to apologise.

The Hon. C.J. SUMNER: Clearly that is the case and everyone knows that it was the case. It is on the public record.

The PRESIDENT: Order! The honourable Attorney has been asked to withdraw.

The Hon. C.J. SUMNER: On what basis do I have to withdraw that statement? It was certainly not unparliamentary—

The PRESIDENT: The Attorney has impugned a member of the Parliament.

The Hon. C.J. SUMNER: —to say that a scurrilous smear campaign was initiated—

Members interjecting:

The Hon. C.J. SUMNER: Well, that is where it was initiated. It was initiated by Olsen, and you know that it was.

Members interjecting:

The PRESIDENT: Order! The honourable Attorney-General has been asked to withdraw.

The Hon. C.J. SUMNER: I will withdraw, Mr President, and I will say that a campaign was initiated by Olsen and others and supported by certain members in this place including, to his shame, the shadow Attorney-General Griffin.

The Hon. K.T. Griffin: That is nonsense.

The Hon. C.J. SUMNER: I know the story.

The PRESIDENT: Order! The honourable Attorney-General is straying from the debate.

The Hon. C.J. SUMNER: I am not straying. The only reason that this issue is before us now is because of the way in which these people opposite treated the Attorney-General and me in particular at that time, and they know that.

The Hon. Diana Laidlaw: This is a personal Bill.

The Hon. C.J. SUMNER: The honourable member has not read the history of it. Who made the recommendation? The honourable member might recall that the recommendation was made by the—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The interjections are not improving the debate. The honourable Attorney-General.

The Hon. C.J. SUMNER: It is ironic—and this is certainly relevant—that this Bill comes before the Parliament not as it normally would do because there are accusations of partisanship on the part of the Attorney-General (because that is not the case) but because the Opposition by its actions and accusations in 1988 politicised the position of Attorney-General and the decision-making of the Attorney-General at that time. In fact, the Opposition politicised the position, not I.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: As has been determined—as the honourable member knows—there was absolutely no evidence whatsoever of any impropriety on my part in the exercise of my functions as Attorney-General, and that was the finding of the Hydra report. This recommendation comes from the NCA because the position became politicised—not because of anything I have done but because of the attacks on the office, and the holder of the office at that time, namely, me.

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: Then you haven't read the report. I will not repeat my view that accountability is best achieved through an elected official, but it is a view that I hold in a number of areas. I think it is worth mentioning the Canadian Law Reform Commission's report, which was referred to yesterday by the shadow Attorney-General. On page 8 of that report it is stated:

In England the Attorney-General is not a member of Cabinet, and is independent from its dictates with respect to the exercise of prosecutorial authority. It has been clear since the early part of this century that the English Attorney-General may seek the advice of Cabinet but is not required to do so. The most well-known explanation of this relationship is that of Lord Shawcross, while Attorney-General of England in 1951:

> I think the true doctrine is that it is the duty of an Attorney-General, in deciding whether or not to authorise the prosecution, to acquaint himself with all the relevant facts, including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other consideration affecting public policy. In order so to inform himself, he may, although I do not think he is obliged to, consult with any of his colleagues in the Government, and indeed, as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand, the assistance of his colleagues is confined in informing him of particular considerations which might affect his own decision, and does not consist, and must not consist, in telling him what that decision ought to be. The responsibility for the eventual decision rests with the Attorney-General, and he is not to be put, and is not put, under pressure by his colleagues in the matter. Nor, of course, can the Attorney-General shift his responsibility for making the decision onto the shoulders of his colleagues. If political considerations which in the broad sense that I have indicated affect government in the abstract arise it

is the Attorney-General, applying his judicial mind, who has to be the sole judge of those considerations.

It is always worth outlining that there are distinctions between what people might call narrow political considerations, which are not those that can exercise the mind of the Attorney-General, and broader political or public interest considerations that may do so. That is explained at page 12 of the Canadian Law Reform Commission's report, as follows:

It must also be noted that the 'Shawcross principle' itself—that the Attorney-General is to be free from political influences—has been questioned. Edwards has suggested that some qualifications must be made to the principle, to take account of a distinction between types of political considerations. What the Attorney-General must ignore are partisan political considerations: that is, considerations 'designed to protect or advance the retention of constitutional power by the incumbent Government and its political supporters.' On the other hand the Attorney-General should have regard to 'non-partisan' political considerations such as 'maintenance of harmonious international relations between States, the reduction of strife between ethnic groups, the maintenance of industrial peace and generally the interests of the public at large.'

In summary, the Attorney-General has always acted independently of Cabinet in the exercise of his prosecutorial discretion—or I certainly hope that he has. Certainly, I have not taken directions from Cabinet and I have refused to take them from Cabinet or my Party in relation to any matter.

Given that there are broad public interest considerations, some of which have been referred to in the Canadian Law Reform Commission report, I think it is somewhat sad that members of Parliament want to remove considerations of the public interest from elected officials. I suspect that is because of the low esteem in which politicians are held. I addressed this matter earlier in the week in relation to the role and powers of the Ombudsman, because the Ombudsman is an independent person rightly looking at administrative decisions. However, both Ombudsmen and the judiciary feel that on occasions they can get involved in policy areas when those areas clearly should be left to elected Governments and elected officials.

If we are to talk about accountability, it is also important that in this area of prosecution policy there be some accountability for the actions of a DPP, or whoever, through an elected official. Traditionally, that has been done through the Attorney-General—an elected official, but independent in decision making in this area—being able to answer questions, and so on, in the House. With that background I can say that I shall not be supporting the amendments of the Hon. Mr Griffin. We shall have to see whether agreement can be reached on any matters. If not, then the Bill will obviously fail.

The Hon. Mr Griffin has raised a number of points. He has indicated that appointment to the position of Director of Public Prosecutions should be dependent upon a person having at least seven years experience as a legal practitioner. The Bill has a five-year minimum period. The five-year period is consistent with the provision in the Commonwealth legislation. It is also the period of experience required for magisterial appointment, although it is fair to say that in Western Australia and Victoria eight years experience is required. Whilst it is acknowledged that it would be rare for a person with less than seven years experience to be appointed, the Government is not convinced of the need to extend from five to seven years the requisite period of experience, although I do not consider that to be a major issue.

The Hon. Mr Griffin has also recommended that the term of appointment should be for 10 years, not up to seven years as provided in the Bill. The Government does not support a minimum period of 10 years. Such a period is considerable and does not give flexibility where a person may wish to accept an appointment for less than that stipulated. The person would need to accept the 10-year appointment and then resign before its expiration.

The Commonwealth legislation provides for a period not exceeding seven years, and this is considered to be a reasonable provision. In Western Australia it is a five-year appointment, although in Victoria it is until the age of 65. It is fair to say, as the Hon. Mr Griffin and the Canadian Law Reform Commission report pointed out, that the Victorian legislation is at one end of the spectrum of unaccountability of DPPs and at the other end is the British system where the DPP has been and still is directly responsible to the Attorney-General.

The Hon. Mr Griffin has also raised the issue of the salary of the Director. He suggested that the remuneration should be set by the Remuneration Tribunal and at least at the level of a District Court judge. The Government does not support this view. The Bill provides for terms and conditions to be determined by the Governor. This is the usual procedure adopted in many pieces of legislation dealing with statutory office holders—for example, the Solicitor-General and the Auditor-General.

Appointment on terms determined by the Govenor enables a contract to be entered into having regard to the experience, background, skills and special circumstances of the Director. If any problems relating to conditions become evident in the future, the office can then be proclaimed to come within the jurisdiction of the Remuneration Tribunal, so the Remuneration Tribunal is not excluded, but at the initial stage it would be for the Govenor to make the determination of the salary.

The Hon. Mr Griffin has also suggested that the Director of Public Prosecutions should be subject to the provisions of the Judges' Pensions Act. The Judges' Pensions Act is usually applied to judges, except in the case of the Solicitor-General. Normally the Solicitor-General would go on to judicial appointment, anyhow. Judges are usually appointed for the remainder of their working lives, whereas that clearly would not necessarily be, and has not been, the case with the Director of Public Prosecutions because Directors of Public Prosecutions have changed, for instance, in the Commonwealth and in Victoria and I think in other States. I think it would be inappropriate to lock them into the non-contributory Judges' Pensions Act. The inclusion of such a provision is likely to raise questions regarding relativities with other staff in the Director's office, the Crown Solicitor, and so on. I would not support the inclusion of the Director in the judicial superannuation scheme.

The Government is attempting to implement this proposal without there being any greater impost on resources, and tying the terms of the appointment of the Director of Public Prosecutions to that of a District Court judge would have resource implications. It would also almost certainly have an effect on relativities with other lawyers in the employ of the Crown, such as the Crown Solicitor, and so on. I think that it is preferable for the salary to be negotiated when someone is appointed. That can take into account the relevant background, experience and special circumstances of the Director. In some cases it may mean that they are paid the salary of a District Court judge, but I think to lock Governments into paying that salary is not satisfactory and is likely to increase significantly the cost of the initiative and would undoubtedly have an effect on the relativities of other lawyers employed by the Crown.

The Hon. K.T. Griffin: The Public Finance and Audit Act provides that the salary and allowance of the Auditor-General will be determined by the Remuneration Tribunal.

The Hon. C.J. SUMNER: Many other office holders have their salaries and terms of appointment determined by the Governor after negotiation. It is true that in any of those cases proclamations can be made; if negotiations break down, for instance, the matters can be determined by the Remuneration Tribunal.

The Hon. Mr Griffin has also indicated that he does not believe that it is appropriate for the Governor to terminate the Director's appointment, but that a system should be established similar to that which applies to the Ombudsman; that is, that the Government should be able to suspend and then the matter be referred to both Houses of Parliament. The Government does not support this amendment. The Director of Public Prosecutions will be performing an executive function in the broad sense of the word.

The Governor, not the Parliament, should be in a position to remove the Director if one of the situations set out in subsection (8) arises. The removal of the Director in the Commonwealth, Western Australia and New South Wales is done by the Govenor. Victoria is the only place where the Parliament gets involved. I think it is appropriate that it should be the Govenor who can remove the DPP on specified grounds only. Obviously if it is being done capriciously or in some way outside the legislation, it will be subject to the matter being taken to court. In any event, there would be some political difficulties for any Government in trying to dismiss a Director of Public Prosecutions if there were no just grounds for doing so.

It has also been suggested that clause 4 (6), dealing with declarations of pecuniary interests, should be extended to cover any interest which may raise a conflict in any matter within the responsibility of the Director. I note that the legislation in other States tends to be limited to pecuniary interests. However, I am prepared to consider this issue further in Committee.

The Hon. Mr Griffin has also proposed an amendment to remove the provision which would allow the Attorney-General to give directions to the Director of Public Prosecutions. This amendment is opposed. Various pieces of legislation dealing with the establishment of the Director of Public Prosecutions include different provisions relating to the relationship between the Director and the Attorney-General.

In fact the Hon. Mr Burdett was not unaware of this, but in many Acts the powers of the Attorney-General are retained and can be exercised concurrently with the powers of the Director of Public Prosecutions. That is the situation in New South Wales where the establishment of the office of the DPP has not affected the functions of the Attorney-General. In the Commonwealth certain powers are retained by the Attorney-General such as right of appeal, prosecution in the name of the Attorney-General and certain other powers. In Western Australia the provisions of its DPP Act do not derogate from the functions of the Attorney-General in granting indemnities or consents to prosecutions. Many of the Acts retain the powers of the Attorney-General and allow him or her to act in areas where the Director also has some power. Even in Victoria the Attorney-General retains the power to enter a *nolle prosequi*. South Australian legislation does not specifically retain the Attorney-General's powers. Consequential amendments to be made to other legislation will also limit many of the Attorney-General's existing powers and functions. Therefore, the role of the Attorney-General in day-to-day practice will be considerably more limited than in some other jurisdictions.

I consider it to be reasonable for the Attorney-General to be given the power, after consultation with the director, to direct the director in relation to the carrying out of his or her functions either generally or in relation to specific matters. Such directions will need to be published in the director's annual report. Therefore, there will be no secrecy surrounding the directions given to the director and I would envisage that, apart from general direction, the occasions on which the Attorney would give specific directions would be very limited but it is, nevertheless, a fail safe provision which maintains and ensures accountability to an elected official—the principle which I originally started out with and which I have espoused for some considerable time in this Parliament and elsewhere. It is worth noting that the Hon. Mr Griffin relied on the Canadian Law Reform Commission proposals to a considerable extent, but its recommendations were that the Attorney-General should have the power to issue general guidelines and specific directions to any DPP established in Canada. It is true that in the Commonwealth guidelines and directions can be given by the Attorney-General and that model was followed, although in Victoria again guidelines but not specific case directions can be given by the Attorney.

The Hon. Mr Griffin suggested that the guidelines furnished by the Attorney-General to the director and the directions or guidelines given by the director to the Commissioner of Police should be published in the *Government Gazette* and laid before each House of Parliament. This proposal is opposed. The reporting mechanism of the annual report will ensure that the information is publicly available. I believe that this is sufficient to ensure that the public can be assured that neither the Attorney-General nor the director will abuse the power. A requirement that the direction be published immediately is likely to lead to difficulties, for example, where it would be contrary to the interests of justice to require the contents of the instrument to be disclosed. The Commonwealth has had to address this issue by allowing the notification to be withheld in certain circumstances.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Then, there is really no point in this. How the power has been exercised should be considered at the time of the annual report. At the time it is exercised nothing effective could be done in any event. No doubt, if it was a matter of major controversy questions could be asked and it is probably likely that if directions were given it would be in an area of some controversy. So, I do not see the need for that.

The Hon. Mr Gilfillan has raised a number of specific queries with regard to the establishment of the office of the Director of Public Prosecutions. The queries raised are dealt with as follows: it is envisaged that the Office of the Director of Public Prosecutions will comprise the present staff of the Criminal Prosecutions Division of the Attorney-General's Department, together with two additional solicitors to augment the committals liaison unit and two additional secretarial/receptionist positions. Also, within those resources a manager of the solicitor's section will be established and a committal liaison group established to liaise with the police on committal proceedings where the Crown Prosecutors may appear. The annual cost to the taxpayer of the total staff will be $2.228 million. The office of the director will be located in the NatWest Building into which the Attorney-General's Department has recently moved. They have a floor of that building.

Accommodation and energy costs will be the same as for the criminal prosecutions section, that is, approximately $330 300. The infrastructure of the office will be similar to the present criminal prosecutions section. The director, however, will assume responsibility for the administration and control of the office. In fact, the Crown Prosecutor has

already done that within the Attorney-General's office. The office will consist of prosecutors to conduct prosecutions, solicitors to prepare briefs, lay information, attend arraignments, and so on and support staff including four para legal staff. Overall costs of the office are likely to be in the order of $3.157 million. This figure is based on the present budgeted cost on the Criminal Prosecutions Division. It was estimated that the establishment of the DPP would entail approximately an extra $150 000 beyond the current budgetary allocation for the Crown Prosecutor's office.

The Government is concerned that this proposal be implemented within those budgetary constraints, which is why the Government wants to ensure that the salaries are subject to negotiation. If this Bill is passed the DPP would at least receive the remuneration of the Crown Solicitor or Parliamentary Counsel and, in the South Australian context, it is difficult to see why the DPP should be paid more than the Crown Solicitor.

The Hon. Mr Gilfillan's final question relates to the impact of the position on the role of the Solicitor-General and the Crown Prosecutor. The position of Crown Prosecutor will become redundant under the new scheme. The prosecutorial responsibility will rest in the director. The Solicitor-General will continue to perform his current duties. Consideration will also be given to amending the Solicitor-General Act of 1972 to allow the Solicitor-General to appear on matters at the request of the Director of Public Prosecutions. I think that he could probably do that now in any event. That is certainly something that should not be lost as it is important that the Solicitor-General is able to appear in criminal matters for the Crown and, if that is not possible because of the drafting of the DPP Act, that should be corrected. I envisage that the Solicitor-General will continue to act in much the same way as he has in the past and will continue to take criminal cases on the instructions of the DPP. Basically, with this Bill the Government has followed fairly closely the Commonwealth model which has been in place now for some considerable time and seems to have worked satisfactorily.

However, we have gone a step further. The Attorney-General will not retain residual powers to enter *nolle prosequis* or to institute proceedings in his own name or other powers which he traditionally has had. They will all become the responsibility of the DPP, except that there will be residual accountability not to the Government as such but to the Attorney-General. The Attorney-General will be able to issue guidelines as he can in a number of other jurisdictions and, indeed, will be able to issue specific directions after consultation with the DPP. Although, as I have said, I would expect that to be a rare occurrence.

The reality is that I take the view that, where we are talking about broad public interest matters, it is important that there be accountability to an elected official. I mentioned some of those broad public interest quasi political matters in the statement from the Canadian Law Reform Commission Report, such as the importance of harmonious relations with other countries and the importance of harmonious relations possibly amongst ethnic groups or different groups within the community. I think that a person who is elected to office in the role of Attorney-General, properly applying his mind to public interest considerations, using the precedents and conventions of the role of the Attorney-General, is a desirable fail-safe provision to have.

As I have said, I am surprised that elected members of Parliament want to continue to divest themselves of what are, in my view, very important principles of democracy. Democracy is really about elected officials making and taking responsibility for decisions. In our community, there is a tendency now, where public interest considerations are looked at, for people to say, 'Politicians cannot be trusted; elected people cannot be trusted; therefore, we will have so-called independent people doing it.' Of course, in doing that, people are really striking at democracy, because they are saying that, if you are elected you are not a fit person, because you are elected, to make certain categories of decision. That is a slur on people who are elected to Parliament. That has come about because of the poor light in which members of Parliament are seen by the community.

We should take a stand on those issues, and this is one small example of it, because the fact of the matter is—and it has always been the case as it is as the system operates at the present time—that the Attorney-General does not play a day-to-day role in the operation of the Crown Prosecutor's office. From one week to the next, I would not see matters requiring my decision. Certainly, sometimes they do, and I must make decisions. Almost invariably, they are made on the advice of the Crown Prosecutor. However, there is an ultimate safeguard in having an elected official who can take the responsibility.

I will provide one example where I think, for instance, if you have a so-called independent DPP or independent person making these decisions, they bring their own values and prejudices to it, which may not necessarily be in the public interest. For instance, Mr Temby, QC, who is the Director of Public Prosecutions in the Commonwealth, espoused the view—which I found abhorrent, as I hope most people would—at one stage that, if you were a person in the public arena, there was a greater obligation on you to be prosecuted; even though the basic test as to whether or not the case would succeed would not normally be met, the fact that you were in the public eye meant that you should be prosecuted to try to clear the air. To my mind that is a quite extraordinary value judgment espoused by a so-called independent Director of Public Prosections.

The Hon. I. Gilfillan: How did the Federal Attorney-General feel about that?

The Hon. C.J. SUMNER: That is the difficulty. I do not have the full details of it, but some suggestion was made that that was the motivation in the Murphy case. If you start accepting those sorts of criteria, you get into very messy waters. If members want more details, I can provide them later. All I am saying is that independent people are not gods. They bring their own prejudices and their own value judgments to things. While it is reasonable to keep day-to-day decision-making at arm's length from the Attorney-General (it has always been at arm's length from the Government; in fact, the Government has never had anything to do with it—at least not in this State), there ought to be some fail-safe accountability mechanism. That is what this Bill does. This Bill does not go as far as Victoria but, as I said before, what we are proposing is not out of the ordinary: it is based roughly on the Commonwealth legislation, except we are to go a step further and retain hardly any residual powers in the Attorney-General that can be exercised personally by him; they all go to the DPP. The only way the Attorney-General can exercise his powers is through the office of DPP and in a manner that is publicly reported. That is by far the best compromise that can be achieved in this area.

Bill read a second time.

STRATA TITLES (RESOLUTION OF DISPUTES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 September. Page 742.)

The Hon. J.C. BURDETT: I support the second reading of the Bill. In particular, I refer to clause 11, which introduces a new part IIIA of the parent Act to deal with resolution of disputes. I believe this measure is necessary.

Certainly, numerous constituents have come to me and to other members of Parliament with minor disputes in regard to strata title matters. There ought to be some sort of way of resolving them without being too heavy handed and without going to too much trouble. That is basically what this Bill does. As I understand it, without having looked at it in detail recently, in New South Wales there was a very heavy handed disputes resolution system with a commission having the power to resolve disputes and so on. We do not want to go into too much bureaucracy, and this is a reasonable way of doing it. Effectively, the Bill requires that disputes be dealt with in the small claims jurisdiction. Clause 11 provides for a new section 41a (2), which provides:

> ... an application should be made to a local court and dealt with by that court within its small claims jurisdiction. Provisions of the Local and District Criminal Courts Act 1926 will apply.

In the package of courts restructuring Bills that are before the Council at present the small claims jurisdiction is provided for in the Magistrates Court Bill, not in the Local and District Criminal Courts Act. We get the same provision in this Bill in new section 41a (19), which provides that:

> 'small claim' means a small claim within the meaning of the Local and District Criminal Courts Act 1926.

It may depend on which Bill is passed first, but I draw this matter to the attention of the Council and the Attorney-General.

The Law Society has provided comments and submissions. These may have been made available to the Attorney as well; I do not know. I will read a part of what it says and the Attorney may have regard to it in Committee:

> The Society has opposed the jurisdiction of the small claims division of the Magistrates Court being increased beyond a $3 000 monetary level. That level should be a factor in determining whether it is appropriate for the dispute between the parties (in relation to this Bill) to be held to be determined in the small claims jurisdiction of the Local Court or in the District Court.
>
> Curiously it appears that the resolution of the strata title dispute must either be in the small claims jurisdiction (current limit $2 000) or alternatively in the District Court (reserved presently for monetary matters over $20 000). It is strange that there is not a provision to enable a Local Court to deal with the matter if it is in fact too complex or involves too much monetary value for a small claims division but is not of sufficient complexity or monetary value to justify the involvement of a District Court judge. Consideration should be given to amending the legislation to enable the Local Court to deal with such a dispute in its ordinary jurisdiction.
>
> The provision in proposed section 41A (7) is appropriate to the resolution of the dispute if it is heard in the small claims jurisdiction of the Local Court but inappropriate if it is to be dealt with by either a Local Court in its full jurisdiction or alternatively by the District Court.

I ask the Attorney, if he has not already done so, to take these matters into account, but in general the provision of a mechanism for dealing with disputes—and they certainly arise, as I have said—is to be commended, and I support the second reading of the Bill.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

JUSTICES AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 8 October. Page 891.)

The Hon. DIANA LAIDLAW: I will speak to only two of the Bill's provisions, both of which relate to domestic violence. First, in relation to the references to restraining orders under section 99 of the Act, I note that the Government proposes to allow affidavits to be used in confirming restraining orders. Great concern has been expressed to me over a long time not so much about the merits of restraining orders as about their enforcement. I have received correspondence in recent days, and I understand that the Attorney-General has received similar correspondence, from the Women's Emergency Shelter on this subject in relation to the case of Mrs Traeger, the breaches of restraining orders by her husband on six occasions over a week, and the nightmare that that is causing Mrs Traeger and her family.

This provision does not relate to the enforcement of these orders, but I suspect that it seeks to make it easier for these orders to be taken out or to be applied to a particular case. I was not clear about whether that is so, or to which stage or how far during the proceedings these affidavits or sworn statements are to apply. I know that the Hon. Trevor Griffin has some concern about affidavits applying when these matters could be heard before the court. I believe that his caution is well meant. It is right that where a defendant can possibly be sent to gaol an affidavit alone would not be appropriate.

I would like some of my concerns to be explained by the Attorney because the application of the law is not a strength that I have and I am not sure what the motivation of this provision is if it is related to the concerns of women and their ability to gain an effective restraining order.

On that subject I would just note as an aside my interest in the matters arising following the football final on Saturday and the calls for the violence or alleged violence during that game to be the subject of assault dealt with by the courts. It seems to me to be quite a sad irony in our society that a football match could provoke such calls. While they may be legitimate, the domestic violence we see against women in their homes on a daily basis hardly attracts page 1 of our newspapers on any day, let alone once a year, yet so many people suggest that restraining orders alone are the most appropriate way to deal with domestic violence.

I would certainly encourage more people to seek further recourse with the courts in these matters in terms of assault charges. I hope that the media (editors, sports editors, and the like, in our newspapers and television stations) can be encouraged to pay as much attention to assault in the home as they seem keen to pay to assault on the football field.

Finally, I refer to access to video and audio tapes. I am concerned at the proposal that people may be able to only view such material and I believe it is important that they have access to the printed transcript, or at least have access to the tape itself, so that they can transcribe it. As to video and audio tapes, perhaps the Attorney can inform the Council of the number of police stations where video taping facilities, in particular, have been set up thus far.

I have not returned to Angas Street for some time to see the application of video tapes, but some years ago I was impressed by the room established for this purpose. I recognise that it is an expensive operation. Does the scheme operate only at Angas Street or are video and audio taping facilities available at other police stations in the Adelaide metropolitan area and in the country? What is the cost of establishing these facilities, let alone the estimated cost of providing a video and/or a transcript in respect of cases that would fall within the ambit of this Bill?

The Hon. T.G. ROBERTS secured the adjournment of the debate.

APPROPRIATION BILL

Received from the House of Assembly and read a first time.

ADJOURNMENT

At 11.49 p.m. the Council adjourned until Thursday 10 October at 2.15 p.m.